

# North Carolina

## 2005 Tax Law Changes

North Carolina Department of Revenue  
Tax Administration

## PREFACE

This document is designed for use by personnel in the North Carolina Department of Revenue. It is available to those outside the Department as a resource document. It gives a brief summary of the following tax law changes:

- (1) Changes made by prior General Assemblies that take effect for tax year 2005. Each change enacted by a prior General Assembly is also discussed in the Department's Tax Law Change document for the year the change was enacted.
- (2) Changes made by the 2005 General Assembly, regardless of when they take effect.

The changes are listed by type of tax. The order of the tax types is their order in the General Statutes, except for local sales and use tax changes. The local sales and use tax changes follow the State sales and use tax changes. Within a tax type, the changes are listed in numerical order. The document does not include law changes that affect the Department of Revenue but do not affect the tax laws.

For further information on a tax law change, refer to the legislation that made the change. Administrative rules, bulletins, directives, and other instructions issued by the Department, as well as opinions issued by the Attorney General's Office, may provide further information on the application of a tax law change.

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## ESTATE TAX

**G.S. 105-32.2(b) – Estate Tax Changes:** The 2004 General Assembly amended this subsection to provide that the North Carolina estate tax is calculated without regard to the deduction for state death taxes allowed under section 2058 of the Code. (Code section 2058 replaces the state death tax credit with a deduction for state death taxes for decedents dying after December 31, 2004.) The amendment was scheduled to expire on July 1, 2005. However, the 2005 General Assembly repealed the sunset.

Therefore, for decedents dying on or after July 1, 2005, the North Carolina estate tax will continue to be equal to the state death tax credit that was allowable under section 2011 of the Internal Revenue Code as it existed prior to 2002. The estate tax is limited to the federal estate tax that would be payable if the federal estate tax was computed without regard to the deduction for state death taxes.

(Effective June 30, 2005; HB 1630, ss 8.1 and 8.2; S.L. 05-144.)

**G.S. 105-32.8 – Federal Determination That Changes Amount of Tax Payable to State:** This section was amended to add language regarding a federal determination of gross estate tax that changes the amount of tax payable to the State. Previously, the statute referred only to a federal correction or determination made with regard to the maximum state death tax credit. However, as of January 1, 2005, there is no state death tax credit allowed under federal law.

(Effective September 27, 2005; HB 105, s. 24, S.L. 05-435.)

## PRIVILEGE TAX

**G.S. 105- 41(a)(1) – Voluntary Contributions to the North Carolina Public Campaign Financing Fund Repealed:** In 2002 this subdivision was amended to require the Department of Revenue to provide attorneys the opportunity to make a contribution of \$50 to the North Carolina Public Campaign Financing Fund at the same time they paid the annual \$50 privilege license tax. The North Carolina Public Campaign Financing Fund was established to provide an alternative means of financing campaigns of candidates for the North Carolina Supreme Court or Court of Appeals who accept fundraising and spending limits.

The voluntary contribution option was seldom used by attorneys and was not effective in raising money for the Fund. As a result, this subsection was amended to repeal the voluntary contribution option.

(Effective January 1, 2006 for applications for new licenses or license renewals issued on or after that date; SB 622, s. 23A.1(b), S.L. 05-276.)

## TOBACCO PRODUCTS LICENSE AND EXCISE TAXES

**G.S. 105-113.5 – Increases in Tax Rate on Cigarettes:** This section was amended to increase the tax rate on cigarettes in two steps. The first rate change increases the tax rate on cigarettes from 2½ mills per cigarette (5 cents per pack of twenty) to 1.5 cents per cigarette (30 cents per pack of twenty), effective for cigarettes sold on or after September 1, 2005 but before July 1, 2006. The second rate change increases the tax rate on cigarettes from 1.5 cents per cigarette to 1.75 cents per cigarette (35 cents per pack of twenty), effective for cigarettes sold on or after July 1, 2006.

(First tax rate increase effective for cigarettes sold on or after September 1, 2005 but before July 1, 2006, SB 622, s. 34.1(a); S.L. 05-276; second tax rate increase effective for cigarettes sold on or after July 1, 2006, SB 622, s. 34.1(b); S.L. 05-276.)

**G.S. 105-113.35(a) – Increase in Tax Rate on Other Tobacco Products (OTP):** This subsection was amended to increase the tax rate on OTP from 2% to 3%.

(Effective for OTP sold on or after September 1, 2005, SB 622, s. 34.1(c); S.L. 05-276.)

**G.S. 105-113.39 – Refund of Unsalable Cigars:** This section was amended to identify the statute's existing provisions regarding the discount for timely reporting and payment of the excise tax on other tobacco products as subsection (a). New subdivision (b) was added to provide for a refund of the OTP excise tax to wholesale dealers or retail dealers who are in possession of stale or otherwise unsalable cigars on which the dealer had paid the excise tax. The application for refund must be accompanied by an affidavit from the manufacturer stating the number of cigars that had been returned by the applicant. The refund is equal to the amount of tax paid on the cigars, less the discount allowed.

(Effective September 1, 2005; SB 868, s. 2, S.L. 05-406.)

## ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES

**G.S. 18B-101(15) – Technical Change to the Definition of Unfortified Wine:** The definition of "unfortified wine" in the Alcoholic Beverage law (Chapter 18B) and the Alcoholic Beverage Excise Tax law (Article 2C of Chapter 105) was amended in S.L. 2004-135. However, the revised definition in Chapter 18B contained an unnecessary word. This subsection was amended to delete the unnecessary word.

(Effective September 27, 2005; HB 105, s. 25(a), S.L. 05-435.)

**G.S. 105-113.68(a) – Technical, Stylistic, and Conforming Changes to the Definitions Applicable to Alcoholic Beverage License and Excise Taxes:**

This subsection was amended to cross-reference the definitions in Chapter 18B instead of repeating the definitions in this subsection and to make other stylistic changes. Those changes were duplicated in two bills – HB 105 and HB 392. HB 105 also amended the definition of “wholesaler or importer” in subdivision (13) to conform to an amendment to G.S. 18B-1104 in 2003 regarding the maximum amount of malt beverages that the holder of a brewery permit may sell. The maximum amount was amended from 310,000 gallons to 25,000 barrels.

(All changes, including conforming change, effective September 27, 2005; HB 105, s. 25(b), S.L. 05-435; all changes except for conforming change effective August 13, 2005; HB 392, s. 2, S.L. 05-277.)

**G.S. 105-113.81A – Increase in Wine Tax Proceeds Earmarked for Grape Growers Council; Conforming Change:**

This section was amended twice. The first amendment increases the amount of wine tax proceeds earmarked for the Grape Growers Council. The Department of Revenue credits 100% of the net proceeds of both unfortified and fortified wine bottled in North Carolina to the Department of Agriculture and Consumer Services on a quarterly basis. Under prior law, the maximum to be credited was \$350,000 per fiscal year. As amended, the annual maximum is \$500,000. The second change is a conforming change to recognize that the Grape Growers Council was transferred from the Department of Agriculture and Consumer Services to the Department of Commerce.

(Increase in distribution effective July 1, 2005; SB 622, s. 11.4, S.L. 05-276; conforming change effective September 8, 2005; HB 1429, s. 4(c), S.L. 05-380.)

**G.S. 105-113.82(h) – Technical Change:** This subsection was amended to correct a grammatical error.

(Effective September 27, 2005; HB 105, s. 34(a), S.L. 05-435.)

**G.S. 105-113.83(b) – Clarifying and Stylistic Changes:** This subsection was amended to clarify that the excise tax on wine shippers applies only to wine shipped to North Carolina consumers and to make stylistic changes.

(Effective September 27, 2005; HB 105, s. 26, S.L. 05-435.)

## FRANCHISE TAX

**G.S. 105-114(a4) – No Double Taxation:** This subdivision was amended to extend the provision that prevented a corporation from being taxed under both the general business franchise tax (G.S. 105-122) and one of the other franchise

taxes. Under prior law, a corporation that was subject to one of the other franchise taxes was subject to the general business franchise tax only to the extent it exceeded the other franchise tax. As amended, the provision preventing double taxation also applies to a corporation if a limited liability company whose assets must be included in the corporation's tax base under G.S. 105-114.1 is subject to one of the other franchise taxes.

(Effective for taxable years beginning on or after January 1, 2006; HB 105, s. 59.2(a), S.L. 05-435.)

**G.S. 105-116.1(e) – Technical Change:** This subsection was amended to correct a grammatical error.

(Effective September 27, 2005; HB 105, s. 34(b), S.L. 05-435.)

## **TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES**

**G.S. 105-129.2A(a) – Sunset Extended:** This subsection was amended to extend the sunset for most of the tax credits included in Article 3A. The Article is now repealed effective for business activities that occur on or after January 1, 2008. (**Note:** The extension of Article 3A does not apply to the research and development credits in G.S. 105-129.10. The credits for research and development expire effective for taxable years beginning on or after January 1, 2006.

(Extension of sunset of Article 3A effective July 29, 2005; HB 1004, s. 1(a), S.L. 05-241; sunset of research and development credits effective for taxable years beginning on or after January 1, 2006; HB 1414, s. 32D.4, S.L. 04-124.)

**G.S. 105-129.2A(a3) – Sunset for Certain Taxpayers in a Development Zone:** This subsection was added to provide a different sunset to certain taxpayers in a development zone. Article 3A is repealed effective for business activities occurring on or after January 1, 2010 instead of January 1, 2008 if the taxpayer meets all of the following conditions:

- (1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce regarding a new or expansion project;
- (2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in a development zone at least ten million dollars of real property and machinery and equipment and create at least 300 new jobs within three years of when the property is

first placed in service in an eligible business; and

- (3) Before January 1, 2006, the taxpayer places at least four million dollars of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location.

(Effective July 29, 2005; HB 1004, s. 1(b), S.L. 05-241.)

**G.S. 105-129.3 - Enterprise Tier Designations; Exception for Multi-County Industrial Park Added; Exceptions for Certain Small Counties Revised; Exceptions for Certain Counties With High Unemployment Added:** G.S. 105-129.3 provides for how the Secretary Of Commerce determines enterprise tier designations for the State's counties. Three changes were made to this section. The first change added new subsection (d1) to provide an exception to the general tier designation rules for a multi-jurisdictional industrial park. An industrial park will receive the lowest enterprise tier designation of the counties in which it is located if it meets all of 6 conditions. Those conditions include (1) the industrial park must be located, at one or more sites, in four or more contiguous counties; (2) at least two of the counties in which the park is located must be tier one areas; (3) the park must be owned by four or more units of local government or by a nonprofit corporation that is owned or controlled by four or more units of local government; (4) the park must have at least 300 developable acres in each county in which the park is located; (5) the total population of all of the counties in which the park is located must be less than 200,000; and (6) at least 16.8% of the population in each county was Medicaid-eligible for the 2003-04 fiscal year based on 2003 population estimates.

G.S. 105-129.3(e) provides exceptions to the general criteria for determining a county's enterprise tier designation for certain small counties. Subdivision (e)(1) provides that a county is designated as an enterprise tier one area if it meets certain conditions. Under prior law, the county had to meet two conditions – the county had to have population of less than 12,000 and more than sixteen percent of its population had to be below the federal poverty level. The second change amended this subdivision to delete the federal poverty level condition.

The third change added new subsection (f) to provide an exception to the general criteria for determining a county's enterprise tier designation. A county whose rank in a ranking of counties by average rate of unemployment for the preceding twelve months is one of the ten highest in the State is designated as an enterprise tier one area.

(Addition of exception for multi-county industrial park effective for taxable years beginning on or after January 1, 2005; SB 868, s. 1, S.L. 05-406; change to exception for small counties effective July 29, 2005 for designations made on or after that date; HB 1004, s. 6, S.L. 05-241; addition of exception for counties with



high unemployment effective July 29, 2005 for designations made on or after that date; HB 1004, s. 4, S.L. 05-241.)

**G.S. 105-129.4(b7) – Major Computer Facilities Enhancements:** This subsection was added to provide enhancements to the Article 3A tax credits for a taxpayer who is eligible for an Article 3A tax credit and who satisfies the eligibility requirements of G.S. 105-129.62 with respect to the tax credit for major computer manufacturing facilities. The enhancements are as follows:

- The wage standard requirement does not apply to the taxpayer's activities at the major computer facility.
- The amount of the credit for creating jobs is increased by \$4,000 per job for jobs at the facility.
- The applicable percentage is 7% and the applicable threshold is \$0 for the credit for investment in machinery and equipment, regardless of the tier designation of the county in which the facility is located.
- The maximum amount of credit for worker training per worker trained is \$1,000, regardless of the tier designation of the county in which the facility is located.
- The taxpayer is eligible for the credit for substantial investment regardless of the tier designation of the county in which the facility is located.

(Effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session.)

**G.S. 105-129.4(d) - Forfeiture of Extended Sunset for Development Zone Investments:** This subsection was amended to provide that if a taxpayer that is subject to the later repeal date of Article 3A under G.S. 105-129.2A(a3) fails to timely make the required level of investment or to timely create the required number of new jobs, the taxpayer forfeits all Article 3A credits that it would not otherwise have been eligible for if it were not subject to the later repeal date.

(Effective July 29, 2005; HB 1004, s. 2, S.L. 05-241.)

**G.S. 105-129.6 – Change in Due Date for Reporting Credits Taken:** Subsection (b) was amended to extend the date by which the Department of Revenue must publish the reports required by this section from April 1 to May 1.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.2, S.L. 05-429.)

**G.S. 105-129.8(a2) – Clarifying Change:** This subsection was amended to clarify that the loss of installments of the jobs credit occurs only if the number of full-time employees in this State falls below the number of full-time employees in this State in the year in which the taxpayer qualified for the credit.

(Effective September 27, 2005; HB 105, s. 28, S.L. 05-435.)

## **BUSINESS AND ENERGY TAX CREDITS**

**G.S. 105-129.15 – Definition of Renewable Energy Property Expanded; Definition of Renewable Fuel Added:** There were two changes to this section. The first change amended subdivision (7)a to expand the definition of renewable energy property. Biomass equipment is renewable energy property if it uses renewable biomass resources for certain purposes. Under prior law, one of those purposes was electrical generation if the electrical generation was from the use of renewable energy crops or wood waste materials. As amended, the requirement to use renewable energy crops or wood waste materials was deleted so that any kind of renewable biomass resources can be used.

The second change to this section added a new subdivision (8) to define “renewable fuel.” The term includes either of the following:

- (a) Biodiesel, as defined in G.S. 105-449.60.
- (b) Ethanol either unmixed or in mixtures with gasoline that are seventy percent (70%) or more ethanol by volume.

(Revised definition of renewable energy property effective for taxable years beginning on or after January 1, 2006; SB 1149, s. 4, S.L. 05-413; new definition for renewable fuel effective for taxable years beginning on or after January 1, 2005; HB 1636, s. 1, S.L. 04-153.)

**G.S. 105-129.15A – Sunset of Article 3B:** This section, which under prior law identified when the various credits in Article 3B sunset, was repealed. Those Article 3B credits that had not already expired were each amended as necessary to provide for the sunset of that credit within the section implementing the credit.

(Effective September 20, 2005; SB 1149, s. 6, S.L. 05-413.)

**G.S. 105-129.16 – Credit for Investing in Business Property Repealed:** This section, which provided a tax credit for investing in business property, was repealed. The tax credit had expired for business property placed in service on or after January 1, 2002. However, since the tax credit was claimed in five equal installments, the section had not been repealed. The last allowable tax year for an installment was tax year 2005 so the section could now be repealed.

Note: Any installments of the tax credit that are unused because of the tax cap in G.S. 105-129.17(b) may be carried forward for five years. Therefore, carryforwards of unused installments may still be claimed. For example, any unused installment from tax year 2005 may be claimed through tax year 2010.

(Effective September 20, 2005; SB 1149, s. 7, S.L. 05-413.)

**G.S. 105-129.16A – Credit for Investing in Renewable Energy Property; Ceiling for Nonresidential Property Raised, Pool Heating System Qualifies, Sunset Extended:** Three amendments were made to this section. The first two changes amended subsection (c). The credit ceiling for renewable energy property placed in a nonresidential property in subdivision (1) was raised from \$250,000 to \$2,500,000. Subparagraph (2)a was amended to make a system that heats a pool eligible for the \$1,400 credit for solar energy equipment that provides domestic water heating. The third change adds subsection (e) to provide that the credit sunsets for renewable energy property placed in service on or after January 1, 2011.

(Effective for taxable years beginning on or after January 1, 2006; SB 1149, s. 5, S.L. 05-413.)

**G.S. 105-129.16C – Conforming Change:** This section was amended to add a sunset provision in new subsection (d) to conform with the repeal of G.S. 105-129.15A.

(Effective September 20, 2005; SB 1149, s. 8, S.L. 05-413.)

**G.S. 105-129.16D – Credit for Constructing Renewable Fuel Facilities:** Article 3B of Chapter 105 was rewritten by adding this new section to provide tax credits for constructing renewable fuel facilities. There are two types of credits included in this section, a dispensing credit and a production credit. By being enacted as part of Article 3B, these credits are subject to the general provisions of G.S. 105-129.17, G.S. 105-129.18, and G.S. 105-129.19, including the election of against which tax the credit will be claimed, the cap on the amount of credit that can be claimed in a taxable year, the substantiation requirements, and the requirement for the Department of Revenue to report the credits claimed to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly.

Subsection (a) provides a dispensing credit to a taxpayer that constructs and installs and places in service in this State a qualified commercial facility for dispensing renewable fuel. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and is clearly identified as associated with renewable fuel.

The credit is equal to 15% of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel. The tax credit is claimed in three equal installments beginning with the taxable year in which the facility is placed in service. If, in one of the years during which an installment of the credit is to be claimed, the portion of a facility that is directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installments of the credit; however, the taxpayer may continue to claim carryforwards of any prior years' installments.

Subdivision (b) provides a production credit to a taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel. The credit is equal to 25% of the cost to the taxpayer of constructing and equipping the facility. The tax credit is claimed in seven equal installments beginning with the taxable year in which the facility is placed in service. If, in one of the years during which an installment of the credit is to be claimed, the facility is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installments of the credit; however, the taxpayer may continue to claim carryforwards of any prior years' installments.

Subsection (c) provides that a taxpayer that claims any other tax credit allowed under Chapter 105 with respect to the costs of constructing and installing a renewable energy facility may not take the credit allowed in this section with respect to the same costs.

Subsection (d) provides that the credit allowed in this section sunsets for facilities placed in service on or after January 1, 2008.

(Effective for taxable years beginning on or after January 1, 2005; HB 1636, s. 1, S.L. 04-153.)

**G.S. 105-129.19 – Change in Manner of Reporting Credits Taken:** This section was amended to require the Department of Revenue to publish the reports required by this section instead of reporting the information directly to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.3, S.L. 05-429.)

## TAX INCENTIVES FOR RECYCLING FACILITIES

### **G.S. 105-129.26 – Change in Manner of Reporting Credits Taken:**

Subsection (e) was amended to require the Department of Revenue to publish the reports required by this section instead of reporting the information directly to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.4, S.L. 05-429.)

## HISTORIC REHABILITATION TAX CREDITS

**G.S. 105-129.38 – Historic Rehabilitation Tax Credit Reports Required:** This section was added to require the Department to publish by May 1 of each year the following information for the previous tax year:

- (1) The number of taxpayers taking the credits allowed under Article 3D.
- (2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken.

The addition of this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.5, S.L. 05-429.)

## LOW-INCOME HOUSING TAX CREDITS

**G.S. 105-129.44 – Change in Manner of Reporting Credits Taken:** This section was amended to require the Department of Revenue to publish the reports required by this section instead of reporting the information directly to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.6, S.L. 05-429.)

## RESEARCH AND DEVELOPMENT TAX CREDIT

**New Article 3F – Research and Development Tax Credit:** This new Article was enacted to provide a research and development tax credit that is available to more taxpayers than the research and development tax credits in G.S. 105-129.10 of Article 3A. The tax credits in Article 3A are limited to taxpayers that are in eligible businesses while the tax credit in Article 3F is available to a taxpayer regardless of its type of business.

**G.S. 105-129.50 – Definitions:** This section sets out the definitions that apply to Article 3F. Definitions are provided for the terms “North Carolina university research expenses,” “period of measurement,” “qualified North Carolina research expenses,” “receipts,” “related person,” “research university,” and “small business.” In addition to the specific definitions, the definitions in section 41 of the Internal Revenue Code also apply to Article 3F.

Subdivisions (1) through (3) are reserved for future additional definitions.

Subdivision (4) defines “North Carolina university research expenses” as any amount the taxpayer paid or incurred to a research university for qualified research performed in this State or basic research performed in this State.

Subdivision (5) defines “period of measurement” by cross-referencing the Small Business Size Regulations of the federal Small Business Administration. Pursuant to those regulations (13CFR121.104), the period of measurement is used to determine the entity’s annual receipts and is determined by how long an entity has been in business. If the entity has been in business for less than three years, the annual receipts for the period of measurement are the receipts for the period of time for which the entity has been in business divided by the number of weeks in business and multiplied by 52. If the entity has been in business for three full fiscal years and has not filed a short-period income tax return for any of those three years, the annual receipts for the period of measurement are the total receipts over the last three years divided by three. If one of the three years’ returns is a short-period return, the annual receipts for the period of measurement are the receipts for the short year and the two full years divided by the total number of weeks in the short year and two full years multiplied by 52.

Subdivision (6) defines “qualified North Carolina research expenses” as qualified research expenses, other than North Carolina university research expenses, for research performed in this State.

Subdivision (7) defines “receipts” by cross-referencing the Small Business Size Regulations of the federal Small Business Administration. Pursuant to those regulations (13CFR121.104), receipts means total income, gross income plus cost of goods sold as reported for federal income tax purposes, less net capital gains or losses and taxes collected for and remitted to a taxing authority to the

extent included in gross or total income, proceeds from transactions between the entity and its domestic or foreign affiliates if also excluded from gross or total income on a federal consolidated return, and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

Subdivision (8) defines “related person” by cross-referencing G.S. 105-163.010, which in turn defines the term by cross-referencing sections 267(b) or 707(b) of the Internal Revenue Code.

Subdivision (9) defines “research university” as an institution of higher education that is either (i) classified as a Doctoral/Research University I or II, a Masters College and University I or II, or a Baccalaureate College, Liberal Arts or General in the most recent edition of ‘A Classification of Institutions of Higher Education’ issued by the Carnegie Foundation for the Advancement of Teaching or (ii) a constituent institution of the University of North Carolina.

Subdivision (10) defines “small business” as a business whose annual receipts, combined with the annual receipts of all related persons, for the applicable period of measurement did not exceed 1 million dollars.

(Effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.2, S.L. 04-124.)

**G.S. 105-129.51 – Administration: Sunset:** Subsection (a) of this section requires a taxpayer to meet the wage standard, health insurance, environmental impact, and safety and health program requirements found in G.S. 105-129.4 to be eligible to claim the Article 3F credit. Subsection (b) provides that the Article 3F credit sunsets for taxable years beginning on or after January 1, 2009. Subsection (c) provides that the two research and development tax credits allowed in G.S. 105-129.10 of Article 3A and the research and development tax credit allowed under new Article 3F are exclusive. A taxpayer may elect to take only one of the three credits with respect to its research activities in a taxable year.

(Effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.2, S.L. 04-124; subsection (c) is repealed for taxable years beginning on or after January 1, 2006; HB 1414, s. 32D.4, S.L. 04-124.)

**G.S. 105-129.52 – Tax Election; Cap:** Subsection (a) provides that the credit in Article 3F may be claimed against either franchise tax or income tax. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the credit is first claimed. The election is binding and applies both to the credit and any carryforwards of the credit. Subsection (b) provides that the Article 3F credit may not exceed 50% of the amount of tax against which it is claimed, reduced by the sum of all other tax credits allowed against that tax.

This limitation applies to the cumulative amount of credit, including carryforwards. Any unused portion of this credit may be carried forward for the succeeding 15 years.

(Effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.2, S.L. 04-124.)

**G.S. 105-129.53 – Substantiation:** This section requires a taxpayer claiming a tax credit under Article 3F to maintain and make available for inspection any information or records required by the Secretary of Revenue. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer.

(Effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.2, S.L. 04-124.)

**G.S. 105-129.54 – Reports:** This section originally required the Department of Revenue to make an annual report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly identifying the number of taxpayers that claimed an Article 3F tax credit itemized by the categories of small business, low-tier, other, and university research; the amount of each credit claimed in each category; and the total cost to the General Fund of the credits claimed.

This section was later amended to require the Department of Revenue to publish the reports required by this section instead of reporting the information directly to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Original provisions effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.2, S.L. 04-124; amended reporting provisions effective January 1, 2007; SB 393, s. 2.7, S.L. 05-429.)

**G.S. 105-129.55 – Credit for North Carolina Research and Development:** This section provides a credit for North Carolina research and development expenses. The credit consists of two parts – a credit for qualified North Carolina research expenses and a credit for North Carolina university research expenses. The credit for qualified North Carolina research expenses is further divided into three categories – small business, low-tier research, and other research.

Subsection (a) provides a tax credit for qualified North Carolina research expenses. The credit is equal to a percentage of the expenses based on



whether the expenses qualify as small business, low-tier research, or other research. If the taxpayer was a small business as of the last day of the taxable year the applicable percentage is 3%. Research performed in a tier one, two or three area is considered low-tier research and the applicable percentage is 3%. Research expenses that do not qualify as small business or low-tier are considered other research. The applicable percentage is 1% for other expenses of 50 million dollars or less, 2% for expenses of 200 million dollars or less but more than 50 million dollars, and 3% for expenses of more than 200 million dollars. Only one credit is allowed with respect to the same expenses. If the expenses qualify in more than one category, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's expenses qualify as low-tier and part of the expenses qualify as other research, the applicable percentages apply separately to each part of the expenses.

Subsection (b) provides a tax credit for North Carolina university research expenses. The credit is equal to 15% of the expenses.

(Effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.2, S.L. 04-124.)

## **TAX INCENTIVES FOR MAJOR COMPUTER MANUFACTURING FACILITIES**

### **New Article 3G – Tax Credit for Major Computer Manufacturing Facilities:**

This new Article was enacted to provide a tax credit for major computer manufacturing facilities that make a substantial investment and significantly increase employment levels in North Carolina.

**G.S. 105-129.60 – Legislative Findings:** This subsection sets out the legislative findings for why tax incentives for major computer manufacturing facilities are warranted.

(Effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session.)

**G.S. 105-129.61 – Definitions:** This section sets out the definitions that apply to Article 3G. Definitions are provided for the terms “computer manufacturing,” “facility,” “full-time job,” “increased employment level,” “related entity,” “strategic partner,” “successor in business,” and “unit output.”

Subdivision (1) defines “computer manufacturing” by cross-reference to the definition of that term for sales tax purposes in G.S. 105-164.14.

Subdivision (2) defines “facility” as a single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

Subdivision (3) defines “full-time job” as a permanent position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.

Subdivision (4) defines “increased employment levels” as the total number of full-time jobs and new permanent part-time jobs converted into full-time equivalences created by the taxpayer at the facility, either directly or indirectly through a related entity or strategic partner, as of December 31 as compared to the employment level of the taxpayer as of December 31 of the year in which the taxpayer begins construction of the facility or as of the date the Secretary of Commerce makes the written determination required under G.S. 105-129.62, whichever is earlier. Jobs transferred from one area in the State to another area in the State are not considered new jobs and may not be included in the increased employment level.

Subdivision (5) defines “related entity” as an entity for which the taxpayer possesses directly or indirectly at least 80% of the control and value.

Subdivision (6) defines “strategic partner” as a business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

Subdivision (7) defines “successor in business” as a corporation that through legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the computer manufacturing and distribution business.

Subdivision (8) defines “unit output” as the total number of computers and computer peripherals produced, assembled, or manufactured at the facility during the taxable year.

(Effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session.)

**G.S. 105-129.62 – Eligibility:** Subsection (a) provides that, for a taxpayer to be eligible for the tax credit for major computer manufacturing facilities, the Secretary of Commerce must make a written determination that the taxpayer has made or is expected to make a substantial investment and significantly increase

employment levels in North Carolina. A substantial investment is an investment, either directly by the taxpayer or indirectly through a related entity or strategic partner, of at least one hundred million dollars in private funds to construct a computer manufacturing and distribution facility over a five-year period. Costs of construction may include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility. A significant increase in employment levels is an increased employment level of at least 1,200 within five years after the time that the facility is first used as a computer manufacturing and distribution facility.

Subsection (b) provides that, for a taxpayer to be eligible for the tax credit for major computer manufacturing facilities, the taxpayer and its related entities and strategic partners whose employees are included in the taxpayer's increased employment level must provide health insurance for all of the full-time jobs at the facility with respect to which the credit is claimed each year it claims a credit or carryforward of a credit. An entity provides health insurance if it pays at least fifty percent of the premiums that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125. Each year that a taxpayer claims a credit or carryforward of a credit, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level continue to meet the health insurance requirement. If the requirement is not met during a taxable year, the credit expires and the taxpayer may not take a carryforward of any unused credit.

Subsection (c) provides that a taxpayer is eligible for the tax credit for major computer manufacturing facilities with respect to a facility in this State only if, as of the last day of the taxable year for which a credit or carryforward is claimed, the taxpayer and its related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and have had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. For the taxpayer's related entities and strategic partners, this subsection applies only to the activities of the related entity or strategic partner at the facility with respect to which a credit is claimed. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). Upon request, the Secretary of Environment and Natural Resources must notify the Department of Revenue of whether a person currently has any of these pending actions or has had any of these final determinations within the last five years.

Subsection (d) provides that a taxpayer is eligible for the tax credit for major computer manufacturing facilities with respect to a facility in this State only if, as of the last day of the taxable year for which a credit or carryforward is claimed, the taxpayer and its related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no citations under the Occupational Safety and Health Act at the facility with respect to which the credit is claimed that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. The term "serious violation" has the same meaning as in G.S. 95-127. Upon request, the Secretary of Labor must notify the Department of Revenue of whether a person has had these citations become final orders within the past three years.

Subsection (e) provides that a taxpayer is eligible for the tax credit for major computer manufacturing facilities with respect to a facility in this State only if, as of the last day of the taxable year for which a credit or carryforward is claimed, the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no overdue tax debts that have not been satisfied or otherwise resolved.

Subsection (f) requires a taxpayer claiming the tax credit for major computer manufacturing facilities to obtain the written consent of related entities and strategic partners to include jobs created by those entities in the taxpayer's increased employment level. If a taxpayer fails to obtain this written consent, the taxpayer may not include jobs created by the applicable business in its increased employment level. The consent, once granted, is irrevocable. A job may not be included in the increased employment level of more than one entity. The taxpayer is responsible for providing all information needed to verify eligibility for the credit, including information relating to the related entities or strategic partners of the taxpayer.

Subsections (c), (d), and (e) were subsequently amended to replace an erroneous reference to "section" with the correct reference to "Article."

(Original provisions effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session; technical changes effective September 27, 2005; HB 105, ss. 29(a)-(c), S.L. 05-435.)

**G.S. 105-129.63 – Determination by the Secretary of Commerce:** This section requires a taxpayer that wishes to become eligible for the tax credit for major computer manufacturing facilities to apply to the Secretary of Commerce for the written determination required under G.S. 105-129.62(a). The application must be filed under oath and must provide any information needed by the Secretary to make the determination. A taxpayer forfeits the credit if the taxpayer fails to create the required number of new jobs or make the required investment or the information on the application was false at the time it was given and the

person making the application knew or should have known that the information was false. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due thirty days after the date the credit is forfeited and the taxpayer is subject to the penalties in G.S. 105-236 if the taxpayer fails to pay the past taxes and interest by the due date.

This section was subsequently amended to replace an erroneous reference to “section” with the correct reference to “Article.”

(Original provisions effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session; technical change effective September 27, 2005; HB 105, s. 29(d), S.L. 05-435.)

**G.S. 105-129.64 – Credit for Major Computer Manufacturing Facilities:** Subsection (a) provides that a taxpayer that meets the eligibility requirements of G.S. 105-129.62 is eligible for a credit against the income or franchise tax. For taxable years beginning with the 2006 taxable year, the amount of the credit allowable in a year is determined based on the taxable year, the unit output of the facility, the production factor, and the increased employment level at the facility in the current taxable year and previous taxable years.

Subsection (b) provides that for taxable years beginning on or after January 1, 2005, but before January 1, 2006, the amount of the credit is equal to \$10,000,000 if the taxpayer, either directly or through a related entity, has invested at least \$25,000,000 in private funds by the end of the taxable year to construct a computer manufacturing and distribution facility in this State.

Subsection (c) provides that for taxable years beginning on or after January 1, 2006, but before January 1, 2010, the maximum amount of the credit is \$10,000,000. The amount of the credit that may be claimed is determined by multiplying the employment level adjustment factor by the lesser of \$10,000,000 and the product of the unit output of the facility and the applicable production factor described in subsection (f). For purposes of this subsection, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer’s increased employment level for the year by the applicable target increased employment level provided in the table below:

<u>Year</u>	<u>Target Increased Employment Level</u>
2006	600
2007	1,000
2008	1,100
2009	1,500

Subsection (d) provides that, for taxable years beginning on or after January 1, 2010, but before January 1, 2015, the maximum amount of the credit is \$15,000,000 if the taxpayer has in any year attained an increased employment level of 1,500. Otherwise the maximum amount of the credit is \$10,000,000. The amount of the credit is determined as follows:

- (1) If the taxpayer has ever attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is the lesser of \$15,000,000 and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f). If the taxpayer's increased employment level has decreased by more than 40% from that of the previous taxable year, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subsection by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.
- (2) If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of \$10,000,000 and the product of the unit output of the facility and the applicable production factor listed in subsection (f). For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by 1,500.

Subsection (e) provides that for taxable years beginning on or after January 1, 2015, but before January 1, 2020, the maximum amount of the credit is \$20,000,000 if the taxpayer has in any year attained an increased employment level of 2,500. If the taxpayer has in any year attained an increased employment level of at least 1,500, but in no year has attained an increased employment level of at least 2,500, the maximum amount of the credit is \$15,000,000. Otherwise the maximum amount of the credit is \$10,000,000. The amount of the credit is determined as follows:

1. If the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's increased employment level for the current year is at least 1,500, the amount of the credit is the lesser of \$20,000,000 and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f).
2. If the taxpayer has ever attained an increased employment level of at least 1,500 but has never attained an increased of at least 2,500, or if the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's current increased employment level is less than 1,500, the amount of the credit that may be claimed is the

lesser of \$15,000,000 and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection f. If the taxpayer's increased employment level has decreased by more than 40% from that of the previous taxable year and (i) the increased employment level of the previous year was 1,500 or less or (ii) the increased employment level of the current year is 900 or less, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.

3. If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of \$10,000,000 and the product of the unit output of the facility and the applicable production factor listed in subsection (f). For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's employment level for the year by 1,500.

Subsection (f) provides that for taxable years beginning on or after January 1, 2006, but before January 1, 2007, the production factor is \$15.00. For all other taxable years, the production factor is \$6.25

Subsection (g) sets out the expiration provisions for the credit. If the taxpayer fails to attain an increased employment level of at least 1,200, either directly or in conjunction with its strategic partners and related entities, within five years after beginning construction of the facility with respect to which a credit is claimed or the taxpayer fails to invest at least \$100,000,000 in private funds to construct a computer manufacturing and distribution facility over a five-year period, the taxpayer may not take any further major computer manufacturing credits for that facility. Failure to attain an increased employment level of 1,200 within the five years or to invest at least \$100,000,000 in private funds to construct the facility does not result in forfeiture of credits previously taken unless the provisions of G.S. 105-129.63 apply.

(Effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session.)

**G.S. 105-129.65 – Allocation; Cap; Makeup; and Carryforward:** Subsection (a) provides that the credit may be taken against both franchise tax and corporate income tax. The election as to what percentage of the credit to claim against each tax is made with the tax return on which the credit is claimed but is

not binding on the taxpayer, either for that year, for any carryforwards of the credit for that year, or for new credits for subsequent years.

Subsection (b) caps each year's credit at the lesser of the maximum credits set out in G.S. 105-129.64 or the taxpayer's total amount of franchise tax and income tax due for the year, reduced by the sum of all other credits against those taxes except for tax payments made by or on behalf of the taxpayer. This subsection also provides an ordering rule for tax credits. Tax credits that only eliminate a portion of the taxpayer's tax liability are utilized first, followed by tax credits that can eliminate all of the taxpayer's tax liability, followed by refundable credits. The limitation applies to the cumulative amount of credit allowed in any tax year, including any carryforwards. The ordering rule applies only to a taxpayer that is entitled to this credit.

Subsection (c) sets forth a makeup provision. If in any year the amount of the credit calculated based on output exceeds the applicable cap, the excess credit may be credited to a make up account. Amounts credited to the make up account may remain in the account for seven years or until they are used. In any year in which the amount of the credit calculated based on output is less than the applicable cap under G.S. 105-129.64, the taxpayer may increase the credit allowed for that taxable year to the cap amount, as adjusted by any applicable employment level adjustment factor, by using excess credit available in the make up account. A successor in business may take the amounts available in a make up account of a predecessor corporation as if they were excess credits available in a make up account of the successor in business.

Subsection (d) provides for a 25 year carryforward of any unused credit. A successor in business may claim any carryforwards of a predecessor business.

(Effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session.)

**G.S. 105-129.65A – Computer Manufacturing Facilities Tax Credit Reports**

**Required:** This section was added to require the Department to publish by May 1 of each year the following information for the previous calendar year:

- (1) The number of taxpayers taking a credit allowed under Article 3G.
- (2) The number of new jobs created with respect to which credits were taken.
- (3) The amount of investment in real property and machinery and equipment with respect to which credits were taken.
- (4) The total cost to the General Fund of the credits taken.

The addition of this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.



(Effective January 1, 2007; SB 393, s. 2.8, S.L. 05-429.)

**G.S. 105-129.66 – Sunset:** This section provides that the Article 3G credit sunsets for taxable years beginning on or after January 1, 2020.

(Effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 1, S.L. 04-204 Extra Session.)

## CORPORATION INCOME TAX

**G.S. 105-130.4(a)(6) – Technical Change:** This subdivision was amended to correct a typographical error.

(Effective September 27, 2005; HB 105, s. 53, S.L. 05-435.)

**G.S. 105-130.5(a)(16) – Addition Related to Tonnage Tax:** This subdivision was added to require an addition to federal taxable income for gross income from international shipping activities that a corporation excludes from federal taxable income because the corporation elects to be subject instead to a tonnage tax under subchapter R of Chapter 1 of the Internal Revenue Code.

(Effective for taxable years beginning on or after January 1, 2005; SB 622, s. 35.1(b), S.L. 05-276.)

**G.S. 105-130.5(a)(17) – Addition Related to Income from Domestic Production Activities:** This subdivision was added to require an addition to federal taxable income for gross income from domestic production activities that a corporation excludes from federal taxable income under section 199 of the Internal Revenue Code.

(Effective for taxable years beginning on or after January 1, 2005; SB 622, s. 35.1(b), S.L. 05-276.)

**G.S. 105-130.5(a)(18) – Addition for Expenses Used to Calculate Credit for a Film or Television Production:** This subdivision was added to require an addition to federal taxable income for qualifying expenses for which a taxpayer claims a credit under G.S. 105-130.47.

(Effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; SB 622, s. 39.1(e), S.L. 05-276.)

**G.S. 105-130.5(b)(22) – Deduction for Hurricane Relief:** This subdivision was added to allow a deduction for the amount paid to a taxpayer from the Disaster

Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance. A deduction is not allowed for payments for goods or services provided by the taxpayer.

(Effective for taxable years beginning on or after January 1, 2004; SB 7, s. 5.7(b), S.L. 05-1.)

**G.S. 105-130.41 – State Ports Tax Credit Reports Required:** This section was amended to add a new subsection (c1) requiring the Department to publish by May 1 of each year the following information for the previous tax year:

- (1) The number of taxpayers taking the credit.
- (2) The total amount of charges with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.9, S.L. 05-429.)

**G.S. 105-130.45 – Manufacturing Cigarettes for Export Tax Credit Reports Required:** This section was amended to add a new subsection (f) requiring the Department to publish by May 1 of each year the following information for the previous tax year:

- (1) The number of taxpayers taking the credit.
- (2) The total amount of exports with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports regarding the use of economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.10, S.L. 05-429.)

**G.S. 105-130.47 – Tax Credit for Qualifying Expenses of a Film or Television Production Company:** This section was added to provide a refundable income tax credit equal to 15% of a production company's qualifying expenses spent in this State in connection with a production. Subsections (a) and (f) were subsequently amended.

Subsection (a) sets out the definitions that apply to this credit. Definitions are provided for the terms "highly compensated individual," "qualifying expenses," and "production company." A "highly compensated individual" is an individual

who receives compensation in excess of one million dollars with respect to a single production. "Qualifying expenses" includes the sum of the total amount spent in this State for goods and services leased or purchased by the production company and compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted North Carolina withholding payments. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. The definition of "production company" is the same as used for sales tax purposes in G.S. 105-164.3. This subsection was amended to add a definition for "live sporting event." A live sporting event is a scheduled sporting competition, game, or race that is originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast.

Subsection (b) provides that a production company is entitled to an income tax credit equal to 15% of its qualifying expenses if it had qualifying expenses of at least \$250,000 with respect to a production. The credit is calculated on all of the taxpayer's qualifying expenses incurred in the production, not just the expenses incurred during the taxable year. In the case of a multi-episode television series, an entire season of episodes is considered one production.

Subsection (c) provides that a pass-through entity that qualifies for this credit does not allocate the credit to its owners as is the general rule for credits earned by pass-through entities. Instead, the pass-through entity is considered the taxpayer for purposes of claiming the credit. If the pass-through entity is paying tax on behalf of the owners of the entity, this credit may not be used to offset that liability.

Subsection (d) provides that the tax credit shall be claimed on the tax return filed for the taxable year in which the production activities are completed. The taxpayer must include the name of the production, a description of the production, and a detailed accounting of the qualifying expenses.

Subsection (e) provides that if the amount of credit exceeds the taxpayer's income tax liability for the taxable year less the sum of all other credits, then the excess is refundable. Nonrefundable credits are credited against the taxpayer's tax liability before this refundable credit.

Subsection (f) limits the amount of credit allowable for a production that is a feature film to \$7,500,000. This subsection also excludes certain types of productions from the credit. Those productions that do not qualify include:

- Political advertisements;
- Television productions of a news program or live sporting event;
- Productions that contain obscene material, as defined in G.S. 14-190.1; or

- Radio productions.

This subsection was amended to add a live sporting event to the types of productions that do not qualify for the credit.

Subsection (g) requires a taxpayer claiming this tax credit to maintain and make available for inspection any information or records required by the Department of Revenue. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer. The Department of Revenue may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions to determine the amount of qualifying expenses.

Subsection (h) requires the Department of Revenue to publish a report by May 1 of each year for the twelve-month period ending the preceding December 31 that identifies each taxpayer that claimed a tax credit under this section; the location of sites used in a production for which a credit was claimed; the qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company; the number of people employed in the State with respect to credits claimed; and the total cost to the General Fund of the credits claimed.

Subsection (i) provides that a taxpayer cannot claim both a tax credit and a deduction for the same expenses. A taxpayer claiming a credit under this section must make an addition to federal taxable income for the expenses used to calculate the credit as provided in G.S. 105-130.5(a)(18).

Subsection (j) provides that this credit sunsets for qualifying expenses occurring on or after January 1, 2010.

(Original provisions effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; SB 622, s. 39.1(a), S.L. 05-276; amendments to subsections (a) and (f) effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; HB 320, ss. 47(a) and (b), S.L. 05-345.)

## INDIVIDUAL INCOME TAX

**North Carolina State Lottery Act:** The 2005 General Assembly enacted House Bill 1023 which established the North Carolina State Lottery for generating funds for public purposes. House Bill 1023 was amended by Senate Bill 622 and affects individual income tax in the following areas:

- **G.S. 105-134(2) and G.S. 105-134.5(b) – North Carolina Taxable Income Includes Income From Gambling Activities:** These statutes

were amended to clarify that the North Carolina taxable income of a nonresident individual includes income derived from gambling activities in North Carolina.

(Effective for taxable years beginning on or after January 1, 2005; SB 622, ss. 31.1(aa) and 31.1(dd), S.L. 05-276.)

- **G. S. 105-259(a)(33) – Disclosure of Tax Information to Lottery Commission:** § 18C-141 of the North Carolina State Lottery Act provides in part that the Commission Director may not enter into a contract as a lottery game retailer with a person who is not current in filing all applicable State tax returns and in payment of all taxes, penalties, and interest owed the State. This subdivision was added to designate the Lottery Commission as an entity that is entitled to receive tax information for the purpose of determining whether a person meets the requirements to be a lottery game retailer.

(Effective for taxable years beginning on or after January 1, 2005; SB 622, s. 31.1(cc), S.L. 05-276.)

- **G. S. 105-163.2B – Lottery Commission Must Withhold Taxes:** This statute requires the Commission to deduct and withhold State income taxes of 7% from the payment of winnings of \$600 or more. The Commission is required to file a return and pay the withheld taxes as required in G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary.

(Effective for taxable years beginning on or after January 1, 2005; SB 622, s. 31.1(bb), S.L. 05-276.)

**G.S. 105-134.2(a) - Delay Sunset of Temporary Tax Rate Increase:** The individual income tax rate of 8.25% was scheduled to expire for tax years beginning on or after January 1, 2006. This subsection was amended to delay the sunset until January 1, 2008.

(Effective for taxable years beginning on or after January 1, 2001, and expires for taxable years beginning on or after January 1, 2008; SB 622, s. 36.1(a), S.L. 05-276.)

**G.S. 105-134.6(b)(18) – Deduction for Hurricane Relief:** This subdivision was added to allow a deduction for the amount paid to a taxpayer from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance. A deduction is not allowed for payments for goods or services provided by the taxpayer.

(Effective for taxable years beginning on or after January 1, 2004; SB 7, s. 5.7(a), S.L. 05-1.)

**G.S. 105-134.6(c)(3) – Addition for State or Local General Sales Tax**

**Deducted on the Federal Return:** This subdivision was amended to clarify that, in addition to state, local, or foreign income tax, state or local general sales tax must be added to federal taxable income depending on which tax the taxpayer deducted as an itemized deduction on the federal return.

(Effective for taxable years beginning on or after January 1, 2005, SB 622, s. 35.1(e), S.L. 05-276.)

**G.S. 105-134.6(c)(9) – Addition Related to Income from Domestic**

**Production Activities:** This subdivision was added to require an addition to federal taxable income for gross income from domestic production activities that a taxpayer excludes from federal taxable income under section 199 of the Internal Revenue Code.

(Effective for taxable years beginning on or after January 1, 2005; SB 622, s. 35.1(e), S.L. 05-276.)

**G.S. 105-134.6(c)(10) – Addition for Expenses Used to Calculate Credit for a Film or Television Production:**

This subdivision was added to require an addition to federal taxable income for qualifying expenses for which a taxpayer claims a tax credit under G.S. 105-151.29.

(Effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; SB 622, s. 39.1(f), S.L. 05-276.)

**G.S. 105-151.21(b) – Credit for Property Taxes Paid on Farm Machinery:**

This statute was amended to change the definition of farm machinery from machinery subject to State sales tax at the rate of 1% to machinery that is exempt from State sales tax.

(Effective for tax years beginning on or after January 1, 2006; SB 622, s. 33.25, S.L. 05-276.)

**G.S. 105-151.22 – State Ports Tax Credit Reports Required:** This credit was amended to add a new subsection (c1) requiring the Department to publish by May 1 of each year the following information for the previous tax year:

- (1) The number of taxpayers taking the credit.
- (2) The total amount of charges with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken.

The amendment to this section is part of a larger bill that clarifies the public records laws with respect to economic development and requires the Department to publish annual reports on a variety of income tax credits that are used as economic development incentives.

(Effective January 1, 2007; SB 393, s. 2.11, S.L. 05-429.)

**G.S. 105-151.29 – Tax Credit for Qualifying Expenses of a Film or Television Production Company:** This section was added to provide a refundable income tax credit equal to 15% of a production company's qualifying expenses spent in this State in connection with a production. Subsections (a) and (f) were subsequently amended.

Subsection (a) sets out the definitions that apply to this credit. Definitions are provided for the terms “highly compensated individual,” “qualifying expenses,” and “production company.” A “highly compensated individual” is an individual who receives compensation in excess of one million dollars with respect to a single production. “Qualifying expenses” includes the sum of the total amount spent in this State for goods and services leased or purchased by the production company and compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted North Carolina withholding payments. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. The definition of production company is the same as used for sales tax purposes in G.S. 105-164.3. This subsection was amended to add a definition for “live sporting event.” A live sporting event is a scheduled sporting competition, game, or race that is originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast.

Subsection (b) provides that a production company is entitled to an income tax credit equal to 15% of its qualifying expenses if it had qualifying expenses of at least \$250,000 with respect to a production. The credit is calculated on all of the taxpayer's qualifying expenses incurred in the production, not just the expenses incurred during the taxable year. In the case of a multi-episode television series, an entire season of episodes is considered one production.

Subsection (c) provides that a pass-through entity that qualifies for this credit does not allocate the credit to its owners as is the general rule for credits earned by pass-through entities. Instead, the pass-through entity is considered the taxpayer for purposes of claiming the credit. If the pass-through entity is paying tax on behalf of the owners of the entity, this credit may not be used to offset that liability.

Subsection (d) provides that the tax credit shall be claimed on the tax return filed for the taxable year in which the production activities are completed. The taxpayer must include the name of the production, a description of the production, and a detailed accounting of the qualifying expenses.

Subsection (e) provides that if the amount of credit exceeds the taxpayer's income tax liability for the taxable year less the sum of all other credits, then the excess is refundable. Nonrefundable credits are credited against the taxpayer's tax liability before this refundable credit.

Subsection (f) limits the amount of credit allowable for a production that is a feature film to \$7,500,000. This subsection also excludes certain types of productions from the credit. Those productions that do not qualify include:

- Political advertisements;
- Television productions of a news program or live sporting event;
- Productions that contain obscene material, as defined in G.S. 14-190.1; or
- Radio productions.

This subsection was amended to add a "live" sporting event to the types of productions that do not qualify for the credit.

Subsection (g) requires a taxpayer claiming this tax credit to maintain and make available for inspection any information or records required by the Department of Revenue. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer. The Department of Revenue may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions to determine the amount of qualifying expenses.

Subsection (h) requires the Department of Revenue to publish a report by May 1 of each year for the twelve-month period ending the preceding December 31 that identifies each taxpayer that claimed a tax credit under this section; the location of sites used in a production for which a credit was claimed; the qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company; the number of people employed in the State with respect to credits claimed; and the total cost to the General Fund of the credits claimed.

Subsection (i) provides that a taxpayer cannot claim both a tax credit and a deduction for the same expenses. A taxpayer claiming a credit under this section must make an addition to federal taxable income for the expenses used to calculate the credit as provided in G.S. 105-134.6(c)(10).

Subsection (j) provides that this credit sunsets for qualifying expenses occurring on or after January 1, 2010.



(Original provisions effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; SB 622, s. 39.1.(b), S.L. 05-276; amendments to subsections (a) and (f) effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; HB 320, ss. 47(c) and (d), S.L. 05-345.)

**G.S. 105-159.1(a) – North Carolina Political Parties Financing Fund**

**Designation Increased:** This subsection was amended to increase the amount that a taxpayer can designate to this fund from \$1.00 to \$3.00 if the income tax liability is \$3.00 or more. In the case of a married couple filing a joint return whose income tax liability is \$6.00 or more, each spouse may designate \$3.00 to the fund.

(Effective for taxable years beginning on or after January 1, 2006; HB 320, s. 46, S.L. 05-345.)

**G.S. 105-159.2 – North Carolina Public Campaign Financing Fund Name**

**Changed:** The North Carolina Public Campaign Financing Fund has been renamed the North Carolina Public Campaign Fund.

(Effective July 1, 2005; SB 622, s. 23A.1(d), S.L. 05-276.)

## **ESTIMATED INCOME TAX - INDIVIDUALS**

**G.S. 105-163.15 – Underpayment Redefined as Interest:** This section was amended to reclassify the addition to tax for an underpayment of estimated tax as “interest” rather than “penalty”. As a result, the amount assessed under this section cannot be waived and the amount is not required to be remitted to the Civil Penalty and Forfeiture Fund.

(Effective July 1, 2005; SB 622, s. 6.37(l), S.L. 05-276.)

## **ESTIMATED INCOME TAX - CORPORATIONS**

**G.S. 105-163.41 – Underpayment Redefined as Interest:** The catchline for this section and language in subsections (a) and (d) were amended to reclassify the addition to tax for an underpayment of estimated tax as interest rather than penalty. As a result, the amount assessed under this section cannot be waived and the amount collected is not required to be remitted to the Civil Penalty and Forfeiture Fund.

(Effective July 1, 2005; SB 622, s. 6.37(m), S.L. 05-276.)

## SALES AND USE TAX

**G.S. 105-164.3 – Definition Changes:** Most of the definitions are new; one was revised. The changes are as follows and become effective as noted after each definition:

Cable service – (1a). This definition was added as a result of a new imposition of tax. The term is defined as “the one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.”

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

Combined general rate – (4a). This is a new definition. The term is defined as “the State’s general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.” The combined general rate is 7%; it is based on the State rate of 4½% plus the local rate in effect in all counties, which is 2½%. Local levies not in effect in all 100 counties, such as the Mecklenburg County Transportation Tax, are not included in the combined general rate.

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

Computer – (4a). This definition was recodified as (4b).

(Effective October 1, 2005; SB 622, s. 33.2, S.L. 05-276.)

Computer software – (4b). This definition was recodified as (4c).

(Effective October 1, 2005; SB 622, s. 33.2, S.L. 05-276.)

Computer supply – (4d). This definition was added as a result of a change in the sales tax holiday. “Computer supply” is defined as “an item that is considered a ‘school computer supply’ under the Streamlined Agreement.” The term includes only the following items: computer storage media; diskettes; compact disks; handheld electronic schedulers, except devices that are cellular phones; personal digital assistants, except devices that are cellular phones; computer printers; printer supplies for computers; printer paper; printer ink.

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

Food – (10). This definition was rewritten to provide that “an alcoholic beverage, as defined in G.S. 105-113.68,” is not considered “food.” There is no change in the taxation of alcoholic beverages; they continue to be subject to the general State rate and applicable local rate of sales and use tax.

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

Satellite digital audio radio service – (37a). This definition was added as a result of a new imposition of tax. The term is defined as “a radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.”

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

School supply – (37b). This definition was added as a result of a change in the sales tax holiday. The term is defined as “an item that is commonly used by a student in the course of study and is considered a ‘school supply,’ a ‘school art supply,’ or ‘school instructional material’ under the Streamlined Agreement.” An all-inclusive list of items that qualify as “school supplies” is available in the Sales and Use Tax Technical Bulletins.

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

Streamlined Agreement – (45a). This definition was added and refers to the Streamlined Sales and Use Tax Agreement adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005.

(Effective October 1, 2005; SB 622, s. 33.3, S.L. 05-276.)

**G.S. 105-164.4(a) – Maintain State Sales Tax Rate:** The additional ½% State sales and use tax was extended. The tax was scheduled to be repealed for sales made on or after July 1, 2005. The ½% State tax is repealed for sales made on and after July 1, 2007.

(HB 1630, s. 9.1, S.L. 05-144 provided a short-term extension of the tax until the 2005 Appropriations Act was passed. The extension until July 1, 2007 was effective August 13, 2005; SB 622, s. 33.1, S.L. 05-276.)

**G.S. 105-164.4(a)(1b) – Tax on Railway Cars and Locomotives:** This subdivision, which levies a 3% State sales tax with a maximum tax of \$1,500 per article on sales of aircraft, boats, railway cars, or locomotives, was rewritten to delete railway cars and locomotives from the list of items subject to the tax. Railway cars and locomotives will be subject to the general State rate and applicable local rate of sales and use tax effective January 1, 2006.

(Effective January 1, 2006; SB 622, s. 33.4(b), S.L. 05-276.)

**G.S. 105-164.4(a)(1c) – Tax on Various Farm Items and Fuel:** This subdivision, which levies a 1% State sales tax with no maximum tax on sales of horses, mules, semen for the artificial insemination of animals, fuel other than electricity used in connection with farming, manufacturing, and commercial

laundry operations, and supplies consumed directly in the operation of freezer locker plants, was repealed. Sales of supplies consumed directly in the operation of freezer locker plants will become subject to the general State rate and applicable local rate of tax. Fuel, other than electricity and piped natural gas, used in the operation of a manufacturing industry or plant will become subject to the privilege tax under Article 5F. The remainder of the items listed in this subdivision will be exempt from the sales tax and will not be subject to the privilege tax.

(Effective January 1, 2006; SB 622, s. 33.4(b), S.L. 05-276.)

**G.S. 105-164.4(a)(1d) – Items Taxed at 1%, \$80 Maximum:** This subdivision, which levies a 1% State rate of sales tax with a maximum tax of \$80 per article on items listed in G.S. 105-164.4A, was repealed. The items to which this preferential rate applies include farm machinery, manufacturing machinery, telephone company property, laundry machinery, freezer plant machinery, broadcasting machinery, tobacco equipment, farm storage facilities, farm containers, recycling facility equipment, air courier equipment, and flight crew training equipment. Effective January 1, 2006, sales of freezer plant machinery will be subject to the general State rate and applicable local rate of tax. Manufacturing machinery and qualifying recycling facility equipment will be subject to the new privilege tax under Article 5F effective January 1, 2006. The remainder of the items listed in G.S. 105-164.4A will be exempt from the sales and use tax and will not be subject to the privilege tax.

(Effective January 1, 2006; SB 622, s. 33.4(b), S.L. 05-276.)

**G.S. 105-164.4(a)(1e) – Tax on Mobile Classrooms and Mobile Offices:** This subdivision, which levies a 3% State rate of sales tax with a maximum tax of \$1,500 per article on mobile classrooms and mobile offices, was repealed. These items will become subject to the general State rate and applicable local rate of tax effective January 1, 2006.

(Effective January 1, 2006; SB 622, s. 33.4.(b), S.L. 05-276.)

**G.S. 105-164.4(a)(4c) – Tax on Telecommunications Service:** This subdivision, which levies a 6% State rate of tax on the gross receipts derived from providing telecommunications service, was rewritten to increase the rate to the combined general rate of 7%. “Combined general rate” is defined in G.S. 105-164.3(4a).

(Effective October 1, 2005; SB 622, s. 33.4(a), S.L. 05-276.)

**G.S. 105-164.4(a)(6) – Tax on Direct-to-Home Satellite Service:** This subdivision was rewritten to increase the rate of tax on the gross receipts derived

from providing direct-to-home satellite service from a 5% State rate to the combined general rate (7%).

(Effective October 1, 2005; SB 622, s. 33.4(a), S.L. 05-276.)

**G.S. 105-164.4(a)(6) – Tax on Cable Service:** This subdivision was further amended to expand the levy of the combined general rate of tax (7%) to include the gross receipts derived from providing cable service.

(Effective January 1, 2006; SB 622, s. 33.4(b), S.L. 05-276.)

**G.S. 105-164.4(a)(6a) – Tax on Satellite Digital Audio Radio Service:** This new subdivision levies the general State rate and applicable local rate of tax on the gross receipts derived from providing satellite digital audio radio service. It also provides that, for services received by a mobile or portable station, the service is sourced to the subscriber's business or home address.

(Effective January 1, 2006; SB 622, s. 33.4(b), S.L. 05-276.)

**G.S. 105-164.4(a)(7) – Tax on Spirituous Liquor:** This subdivision was rewritten to increase the rate of tax on the sales price of spirituous liquor other than mixed beverages from a 6% State rate to the combined general rate (7%).

(Effective October 1, 2005; SB 622, s. 33.4(a), S.L. 05-276.)

**G.S. 105-164.4A – Items Taxed at 1%, \$80 Maximum:** This section, which lists articles subject to a 1% State rate of tax with a maximum tax of eighty dollars (\$80.00) per article, was repealed. For additional information, see the changes to G.S. 105-164.4(a)(1d) in this document.

(Effective January 1, 2006; SB 622, s. 33.5, S.L. 05-276.)

**G.S. 105-164.4C(b)(2) – Tax on Voice Mail:** This subdivision was rewritten to add voice mail to the list of charges that are included in the gross receipts derived from providing telecommunications service. Consequently, the charge for voice mail is subject to the 7% combined general rate of tax.

(Effective October 1, 2005; SB 622, s. 33.6, S.L. 05-276.)

**G.S. 105-164.4C(c)(11) – Tax on Voice Mail:** This subdivision, which specifically provides that voice mail is excluded from the gross receipts derived from providing telecommunications service, was repealed.

(Effective October 1, 2005; SB 622, s. 33.7, S.L. 05-276.)

**G.S. 105-164.6 – Complementary Use Tax:** This section was rewritten, primarily to modernize the language; there were no substantive changes to the application of the use tax. It clarifies that the use tax applies to taxable services sourced to this State in addition to taxable tangible personal property.

(Effective October 1, 2005; SB 622, s. 33.8, S.L. 05-276.)

**G.S. 105-164.13 – Exemptions and Exclusions:** The 2005 General Assembly added several new exemptions, revised some of the existing exemptions, and repealed some of the exemptions. The changes and their effective dates are as follows:

*Potting soil, farm machinery, and fuel – (1)*. The existing exemption for commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds sold to a farmer for agricultural purposes was rewritten to add potting soil to the list of items that are exempt when sold to a farmer for agricultural purposes. The exemption was further expanded to include farm machinery, attachments and repair parts for the machinery, lubricants applied to the machinery, horses or mules, and fuel other than electricity.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

*Farm containers – (1a)*. This new exemption provides that sales to a farmer of containers used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale are not subject to the sales or use tax.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

*Semen used in artificial insemination of animals – (2a)*. The existing exemption for certain substances such as vaccines, feeds, and pesticides when purchased for use on animals or plants held or produced for commercial purposes was rewritten to add semen to the list of items that are exempt. Prior to January 1, 2006, semen used in the artificial insemination of animals is subject to a 1% State rate of sales or use tax.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

*Commercial animal farmers – (4c)*. The existing exemption for certain items used in housing, raising, or feeding animals was rewritten to change the introductory wording. There is no substantive change.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

*Tobacco items – (4d)*. The existing exemption for the lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to

and from the warehouse was rewritten. The following items were added to the list of exempt items: a metal flue sold for use in curing tobacco, and a bulk tobacco barn or rack, parts and accessories attached to the barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Storage facilities – (4e). This is a new exemption for grain, feed, or soybean storage facilities and parts and accessories attached to the facilities. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Mill machinery – (5a). This existing exemption for mill machinery and mill machinery parts and accessories that are subject to the new privilege tax under Article 5F was rewritten to exempt any product that is subject to the privilege tax.

(Effective January 1, 2006; SB 144, ss. 2.12 and 3.2, S.L. 01-347.)

(Amendment effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Telephone equipment – (5b). This is a new exemption for sales to a telephone company regularly engaged in providing telephone service to subscribers on a commercial basis of the following: central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Radio and television equipment – (5c). This is a new exemption for sales to a radio or television company licensed by the Federal Communications Commission of the following: towers, broadcasting equipment, and parts and accessories attached to the equipment.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Broadcasting equipment – (5d). This is a new exemption for sales to a cable service provider of broadcasting equipment and parts and accessories attached to the equipment. The term “broadcasting equipment” does not include cable; therefore, cable will be subject to the general State rate and applicable local rate of sales or use tax.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Laundry equipment and fuel – (10). The existing exemption for sales to commercial laundries or pressing and dry cleaning establishments of certain materials such as bags, hangers, cleaning fluids, and chemicals was rewritten to expand the exemption. As rewritten, the exemption also includes laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article. Also, fuel, other than electricity, used in the direct performance of the laundering, pressing, and cleaning service is exempt from the tax effective January 1, 2006. Prior to that date, such fuel is subject to a 1% State rate of tax.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Major recycling facility purchases – (10a). The existing exemption for sales to a major recycling facility of certain items such as lubricants, materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and that are used or consumed in the manufacturing and material handling processes was rewritten for clarification. It also incorporates the exemption for electricity previously set out in G.S. 105-164.13(10b).

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Electricity sold to major recycling facility – (10b). The existing exemption for sales to a major recycling facility of electricity used at the facility was repealed and incorporated into G.S. 105-164.13(10a).

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Funeral expenses – (18). The existing exemption for funeral expenses not to exceed \$1,500.00 was repealed. The effect of this change is that funeral services will no longer be subject to the sales or use tax. However, any tangible personal property, such as caskets or vaults, sold in connection with funeral services will be subject to the general State rate and applicable local rate of tax.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

North Carolina Museum of Art purchases – (29). This exemption for sales to the North Carolina Museum of Art of paintings and other objects or works of art for public display, the purchases of which are financed in whole or in part by gifts or donations, was repealed. As a result of the exemption for sales to State agencies that was effective July 1, 2004, this exemption is no longer needed.

(Effective September 27, 2005; HB 105, s. 30, S.L. 05-435.)



Free distribution periodicals – (39). This former exemption for free circulation publications was reenacted and rewritten. As rewritten, the exemption applies to sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals. A free distribution periodical is “a publication that is published on a periodic basis monthly or more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail.”

(Effective July 1, 2005; HB 1414, s. 32B.4, S.L. 04-124.)

Free distribution periodicals – (39). This exemption for free distribution periodicals was amended to clarify that the periodical must be *continuously* published on a periodic basis monthly or more frequently. For example, a periodical that otherwise meets the statutory definition but is published monthly only during the summer months and quarterly for the remainder of a year would not qualify for the exemption as a free distribution periodical.

(Effective September 27, 2005; HB 105, s. 31, S.L. 05-435.)

Interstate passenger air carrier purchases – (45). The existing exemption for sales to an interstate passenger air carrier or interstate air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at its hub was rewritten to provide that the exemption applies only to interstate passenger air carriers. It also adds aircraft simulators for flight crew training to the list of items that are exempt. Prior to January 1, 2006, aircraft simulators are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article. A separate new exemption addresses sales to interstate air couriers.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

Interstate air courier purchases – (45b). This new exemption was added as a result of the rewrite of an existing exemption. Sales to an interstate air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at its hub continue to be exempt from the tax. The new exemption also includes sales to an interstate air courier of materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article.

(Effective January 1, 2006; SB 622, s. 33.9, S.L. 05-276.)

**G.S.105-164.13B – Taxation of Food:** Subsection (a) lists items that are not covered by the exemption from State sales tax; these items are subject to the general State rate of tax and applicable local rate of tax. The subsection was

amended to delete alcoholic beverages from the list since they are no longer considered “food.” There is no change in the application of tax to alcoholic beverages; they continue to be subject to the combined State and local sales or use tax. Candy was added to the list of items not covered by the exemption. Therefore, candy is subject to the combined State and local sales or use tax effective October 1, 2005. Prior to that date, candy was subject to only the 2% local “food” tax.

(Effective October 1, 2005; SB 622, s. 33.10, S.L. 05-276.)

**G.S. 105-164.13C – Sales Tax Holiday:** A new category of items that are exempt from the sales or use tax during the sales tax holiday period was added. Beginning with the 2006 holiday, computer supplies with a sales price of two hundred fifty dollars (\$250.00) or less per item will be exempt from the tax.

The term “computer supply” includes only the following items: computer storage media; diskettes; compact disks; handheld electronic schedulers, except devices that are cellular phones; personal digital assistants, except devices that are cellular phones; computer printers; printer supplies for computers; printer paper; printer ink.

(Effective October 1, 2005; SB 622, s. 33.11, S.L. 05-276.)

**G.S. 105-164.14(a) – Refunds to Interstate Carriers:** This subsection was amended to add railway cars and locomotives to the list of eligible items covered by the refund provision for interstate carriers.

(Effective January 1, 2006 for purchases made on or after that date; SB 622, s. 33.12, S.L. 05-276.)

**G.S. 105-164.14(a1) – Passenger Plane Maximum:** This is a new subsection that allows an interstate passenger air carrier a refund of the net amount of sales and use tax paid by it in North Carolina on fuel during a calendar year in excess of \$2,500,000. The “net amount of sales and use tax paid” is the amount paid less the refund allowed under G.S. 105-164.14(a) for interstate carriers. A refund claim covers a calendar year and is due within six months after the end of the calendar year. The refund provision is effective for purchases made on or after January 1, 2005 and is repealed effective for purchases made on or after January 1, 2007.

(Effective January 1, 2005; HB 105, s. 61, S.L. 05-435.)

**G.S. 105-164.14(c) – Refunds to Certain Governmental Entities:** Subdivisions (2b) and (2c), which allow annual refunds to local school administrative units and joint agencies created by interlocal agreements among local school administrative units to jointly purchase food service-related

materials, supplies and equipment on their behalf, were repealed. For purchases made on or after July 1, 2005, the sales and use taxes paid by these entities will not be subject to refund. In lieu of the refund, effective July 1, 2006, a quarterly transfer will be made to the State Treasurer for the State Public School Fund.

(Effective July 1, 2005 for sales made on or after that date; SB 622, s. 7.51.(a), S.L. 05-276.)

**G.S. 105-164.14(c) – LEA Sales Tax Refund Reporting:** This subsection was rewritten to direct the Secretary of Revenue to make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly of the amount of refunds, identified by taxpayer, claimed by local school administrative units and joint agencies created by interlocal agreements among local school administrative units to jointly purchase food service-related materials, supplies and equipment on their behalf. The report must be made by March 1 of each year.

(Effective July 1, 2005; SB 622, s. 7.27(a), S.L. 05-276.)

**G.S. 105-164.14(f) – Information to Counties and Cities:** This subsection was rewritten to provide that the information required to be given to a designated county official pertaining to refunds of tax of at least \$1,000.00 must also be given to the designated city official. It provides that a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board.

(Effective September 27, 2005; HB 105, s. 32(a), S.L. 05-435.)

**G.S. 105-164.14(j) – Refunds to Certain Industrial Facilities:** This subsection was rewritten to add a new industry to the list of industries that qualify for an annual refund if all eligibility conditions are met. New subdivision (3) provides that the owner of a facility that provides air courier services is eligible for refunds.

(Effective August 1, 2005 for sales made on or after that date; HB 105, s. 33(a), S.L. 05-435.)

**G.S. 105-164.14(j) – Sunset for Refunds to Certain Industrial Facilities:** This subsection was further amended to add a sunset for the refund provision for certain industrial facilities. New subdivision (5) provides that this subsection is repealed for sales made on or after January 1, 2010.

(Effective August 1, 2005; HB 105, s. 33(b), S.L. 05-435.)

**G.S. 105-164.14(k) – Reports:** This new subsection requires the Department of Revenue to publish the following information itemized by taxpayer: (1) the number of taxpayers claiming a refund allowed in subsections (g), (h), (i), and (j)

of the section for major recycling facilities, low enterprise tier machinery, nonprofit insurance companies, and certain industrial facilities, respectively; (2) the total amount of purchases with respect to which refunds were claimed; and (3) the total cost to the General Fund of the refunds claimed. The information must be published by May 1 of each year for the 12-month period ending the preceding December 31.

(Effective January 1, 2007; SB 393, s. 2.12, S.L. 05-429.)

**G.S. 105-164.14(k) – Refunds for Motorsports Events:** This is a new subsection that allows a motorsports racing team or a motorsports sanctioning body a refund of sales and use tax paid by it in this State on aviation fuel. The fuel must be used to travel to or from a motorsports event in North Carolina, to travel to a motorsports event in another state from a North Carolina location, or to travel to North Carolina from a motorsports event in another state. The term “motorsports event” includes a motorsports race, a motorsports sponsor event, and motorsports testing. A refund claim is due by the last day of December for the prior July 1 through June 30 fiscal year; refunds applied for after the due date are barred. The refund provision is effective for purchases made on or after January 1, 2005 and is repealed effective for purchases made on or after January 1, 2007.

(Effective January 1, 2005; HB 105, s. 61.1, S.L. 05-435.)

**\*Note:** The legislation adding the reporting requirement for the incentive refunds and the refund provision for motorsports events designated both provisions as subsection (k). The codifier of the Statutes will need to change the designation of one of the subsections.

**G.S. 105-164.15A – Effective Date of Rate Change for Services:** This is a new section that sets out the effective date of a rate change for a taxable service. For a rate increase, the new rate applies to the first billing period that begins on or after the effective date of the increase. For a rate decrease, the new rate applies to bills rendered on or after the effective date of the decrease.

(Effective October 1, 2005; SB 622, s. 33.13, S.L. 05-276.)

**G.S. 105-164.21B – Credit for Local Cable Television Franchise Taxes:** This is a new section that was added as a result of a new imposition of tax on cable television service. It allows a cable service provider a credit against the sales tax imposed for the amount of local franchise tax payable to local governments on its gross receipts for cable service. The cable service provider may collect from its subscribers the rate of sales tax less the rate of the local franchise tax payable on its gross receipts.

(Effective January 1, 2006; SB 622, s. 33.14, S.L. 05-276.)

**G.S. 105-164.28 – Certificate of Resale:** This section sets out the seller's liability and the purchaser's liability with regard to the issuance of an exemption certificate. The purchaser is no longer required to give a description of the type of tangible personal property generally sold in the regular course of business. The certificate must reflect the purchaser's name, address, registration number, and type of business, and the tangible personal property sold must be the type of property typically sold by the type of business stated on the certificate. For a sale made over the Internet or by other remote means, the requirement that the sales tax registration number given by the purchaser match the number on the Department's registry was deleted. The seller must obtain the purchaser's name, address, registration number, and type of business and must maintain this information in a retrievable format in its records. In addition, the statement that a seller of property sold under an exemption certificate is jointly liable with the purchaser for any tax subsequently determined to be due only if the Secretary proves that the sale was a retail sale was deleted.

(Effective October 1, 2005; SB 622, s. 33.15, S.L. 05-276.)

**G.S. 105-164.42B – Streamlined Definition:** The definition of "Agreement" was amended to refer to the definition of "Streamlined Agreement" in G.S. 105-164.3(45a).

(Effective October 1, 2005; SB 622, s. 33.16, S.L. 05-276.)

**G.S. 105-164.42K – Effect of Registration:** This is a new section that provides amnesty to a seller who registers under the Streamlined Agreement. A seller who registers under the Agreement within 12 months after North Carolina becomes a member of the Agreement will not be subject to assessment for sales tax for any period before the effective date of the seller's registration if the seller meets all of the following requirements: 1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement. 2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit. 3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months. The amnesty provision applies to sales tax only; use tax is subject to assessment.

(Effective October 1, 2005; SB 622, s. 33.17, S.L. 05-276.)

**G.S. 105-164.42L – Rates and Boundaries Databases:** This is a new section that gives the State the authority to develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates that apply to those jurisdictions. It also provides that a seller who relies on the information in the databases will not be liable for underpayments of tax if the underpayment is attributable to erroneous information in those databases.

(Effective October 1, 2005; SB 622, s. 33.18, S.L. 05-276.)

**G.S. 105-164.44F(a) – Telecommunications Tax Distribution to Cities:** This subsection provides for a quarterly distribution to cities of a percentage of the net proceeds of taxes collected on telecommunications service during a quarter minus \$2,620,948.00. The subsection was amended to change the percentage of the net proceeds on which the distribution is based from 18.26% to 18.03%.

(Effective for distributions of taxes collected during calendar quarters that begin on or after January 1, 2006; SB 622, s. 33.19, S.L. 05-276.)

**G.S. 105-164.44F(e) – Telecommunications Tax Distribution to Cities:** This subsection was rewritten to correct a grammatical error.

(Effective September 27, 2005; HB 105, s. 34(c), S.L. 05-435.)

**G.S. 105-164.44H – Transfer to Public School Fund:** This is a new section that authorizes a quarterly transfer of funds to the State Treasurer for the State Public School Fund from the State sales and use tax net collections in lieu of annual sales tax refunds to local school administrative units and joint agencies created by interlocal agreements among local school administrative units. The amount of the first quarterly transfers (for the 2006-2007 fiscal year) will be one-fourth of the amount refunded under G.S. 105-164.14(c)(2b) and (2c) during the 2005-2006 fiscal year plus or minus the percentage of that amount by which the total State sales and use tax collections increased or decreased during the 2005-2006 fiscal year. The amount of subsequent transfers will be one-fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total State sales and use tax collections increased or decreased during the preceding fiscal year.

(Effective July 1, 2006; SB 622, ss. 7.51(b) and (c), S.L. 05-276.)

**Chapter 276 of the 2005 Session Laws – LEA Sales Tax Refund Reporting:** In addition to the reports required in G.S. 105-164.14(c), the Secretary of Revenue must make a report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly within 30 days after Senate Bill 622 becomes law of the amount of refunds, identified by taxpayer, claimed by local school administrative units and joint agencies created by interlocal agreements among local school administrative units to jointly purchase food service-related materials, supplies and equipment on their behalf. This report is for refunds claimed during the 2002-2003, 2003-2004, and 2004-2005 fiscal years.

(Effective July 1, 2005; SB 622, s. 7.27(c), S.L. 05-276.)

**Chapter 276 of the 2005 Session Laws – Transfer for Wildlife Resources**

**Commission:** This act provides that, for the 2005-2006 and 2006-2007 fiscal years, the Secretary of Revenue must make a quarterly transfer from the State sales and use tax net collections to the State Treasurer for the Wildlife Resources Fund to fund legislative salary increases for Wildlife Resources Commission employees.

(Effective July 1, 2005; SB 622, s. 29.16, S.L. 05-276.)

**Chapter 276 of the 2005 Session Laws – Consumer Use Tax Reporting:**

This act extends the provision for including a line on the individual income tax return for reporting consumer use tax. The use tax line was scheduled to be deleted beginning with the return for the 2005 tax year; it will remain on the individual income tax return through the 2009 tax year.

(Effective August 13, 2005; SB 622, s. 33.24, S.L. 05-276.)

**Chapter 276 of the 2005 Session Laws – Effective Date of Streamlined**

**Agreement:** The original Streamlined Sales and Use Tax legislation provided that the “Uniform Sales and Use Tax Administration Act” would expire January 1, 2006 unless the Streamlined Sales and Use Tax Agreement had been adopted by either fifteen states had adopted or by states representing a combined resident population equal to at least ten percent of the national population. This act was amended to delete the language regarding expiration since the Agreement was adopted by the requisite number of states on July 1, 2005.

(Effective August 13, 2005; SB 622, s. 33.31, S.L. 05-276.)

**Chapter 276 of the 2005 Session Laws – Revenue Laws Study Committee:**

This act directs the Revenue Laws Study Committee to study the application of sales and use tax to maintenance agreements and to study the equity of taxation of providers of the following services: cable, direct-to-home satellite, satellite digital audio radio, video programming, and data services. The act requires the Committee to furnish reports and make recommendations to the General Assembly and states that it is the intent of the General Assembly to apply sales and use tax in some manner to maintenance agreements beginning July 1, 2006.

(Effective August 13, 2005; SB 622, s. 33.32, S.L. 05-276.)

**Chapter 276 of the 2005 Session Laws – Billing Periods for Prepayments of**

**Services:** This act provides that, for prepayments of telecommunications and direct-to-home satellite services, the first billing period is considered to start on or after November 1, 2005. For prepayments of satellite digital audio radio services, the first billing period is considered to start on or after February 1, 2006.

(Effective August 13, 2005; SB 622, s. 33.34, S.L. 05-276.)

**Chapter 345 of the 2005 Session Laws – Technical Correction:** This act corrects a statutory reference in Section 7.51(c) of Senate Bill 622; G.S. 105-164.14 was erroneously referred to as G.S. 105-164.4.

(Effective July 1, 2005; HB 320, s. 7, S.L. 05-345.)

**Chapter 435 of the 2005 Session Laws – Billing Periods for Prepayments of Services:** This act provides that, for prepayments of cable services, the first billing period is considered to start on or after February 1, 2006.

(Effective September 27, 2005; HB 105, s. 58, S.L. 05-435.)

## LOCAL SALES AND USE TAX

**G.S. 105-467(a) – Local Taxes Imposed:** This subsection imposes the local sales and use tax on items subject to the general State rate of tax. Subdivision (7) was added to provide that the local sales and use tax applies to the gross receipts derived from providing satellite digital audio radio services.

(Effective January 1, 2006; SB 622, s. 33.23, S.L. 05-276.)

**G.S. 105-469(a) – Distribution of Local Taxes:** This subsection was rewritten to change the method of allocating the local taxes levied on food to the taxing counties. One-half of the net proceeds from the 2% food tax is allocated based on the amount of sales tax on food collected in the 1997-1998 fiscal year; that allocation method will not change. The other one-half of the net proceeds is allocated based on population and is included in the distribution for the 1% local tax (Article 39); under the new method, one-half of this amount will be included in the distribution for the first one-half percent local tax (Article 40) and the other one-half will be included in the distribution for the second one-half percent local tax (Article 42).

(Effective September 27, 2005; HB 105, s. 41, S.L. 05-435.)

**Chapter 276 of the 2005 Session Laws – Temporary Local Sales Tax for Beach Nourishment:** This act amended Chapter 123 of the 2004 Session Laws that added a new Article 45, Local Government Sales and Use Tax for Beach Nourishment, G.S. 105-525 through 105-531. The original act authorized the board of commissioners of a coastal county to levy a temporary additional one percent local sales and use tax to be used only for beach nourishment. The 2005 General Assembly reenacted this Chapter and added new Section 3.1 to provide that the act applies only to Dare County.

(Effective August 13, 2005; SB 622, s. 33.33, S.L. 05-276. Identical action was taken in HB 105, ss. 47(a) and (b), S.L. 05-435.)



**Chapter 276 of the 2005 Session Laws – Definition of Food in Local Acts:**

Local taxing jurisdictions have historically used the definition of “food” in the sales and use tax law for purposes of administering the prepared food and beverage taxes in effect in the cities and counties levying such tax. The definition of “food” was amended in the 2005 Session to delete “alcoholic beverages” from the definition. In order to continue to maintain the current taxation of alcoholic beverages, the local acts had to be amended to specifically add alcoholic beverages to the imposition statutes.

(Effective October 1, 2005; SB 622, ss. 33.26 through 33.30, S.L. 05-276.)

## **WHITE GOODS DISPOSAL TAX**

**G.S. 105-187.20 – White Goods Disposal Tax:** The definition of “chlorofluorocarbon refrigerants” was deleted since the white goods disposal tax rate is no longer related to the presence of chlorofluorocarbon refrigerants in white goods.

(Effective September 27, 2005; HB 105, s. 35, S.L. 05-435.)

## **MANUFACTURING FUEL AND CERTAIN MACHINERY AND EQUIPMENT – ARTICLE 5F**

**Article 5F – Title:** The title of Article 5F of Chapter 105 of the General Statutes was changed to “Manufacturing Fuel and Certain Machinery and Equipment” to more accurately identify the items subject to the new privilege tax.

(Effective January 1, 2006; SB 622, s. 33.20, S.L. 05-276.)

**G.S. 105-187.51 – Privilege Tax on Mill Machinery:** This section imposes the new 1% privilege tax with a maximum tax of eighty dollars (\$80.00) per article on the following: a manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State; a contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant; and a subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant. Subsection (b) was rewritten to provide that the term “accessories” does not include electricity.

(Effective January 1, 2006; SB 144, ss. 2.17 and 3.2, S.L. 01-347; amendment to subsection (b) with respect to electricity effective January 1, 2006, HB 105, s. 56(a), S.L. 05-435.)

**G.S. 105-187.51A – Privilege Tax on Manufacturing Fuel:** This is a new section that imposes the new 1% privilege tax on a manufacturing industry or plant that purchases fuel, other than electricity or piped natural gas, to operate the industry or plant.

(Effective January 1, 2006; SB 622, s. 33.21, S.L. 05-276.)

**G.S. 105-187.51B – Privilege Tax on Recycling Equipment:** This is a new section that imposes the new 1% privilege tax with a maximum tax of eighty dollars (\$80.00) per article on a major recycling facility that purchases any of the following for use in connection with the facility: cranes, structural steel crane support systems, and foundations related to the cranes and support systems; port and dock facilities; rail equipment; and material handling equipment.

(Effective January 1, 2006; SB 622, s. 33.21, S.L. 05-276.)

## INSURANCE GROSS PREMIUMS TAX

**G.S. 58-6-25 – Insurance Regulatory Charge:** The percentage rate to be used in calculating the insurance regulatory charge under this statute is 5.5% for the 2005 calendar year. This charge is a percentage of gross premiums tax liability.

(Effective August 13, 2005; SB 622, s. 40.1, S.L. 05-276.)

**G.S. 58-6-25(a) – Conforming Change:** This subsection was amended to conform to the repeal of the preferential tax rate for HMOs (see G.S. 105-228.5(d)(6) below).

(Effective for taxable years beginning on or after January 1, 2007; SB 622, s. 38.4(b), S.L. 05-276.)

**G.S. 105-228.5(d)(2) – Change to Effective Date of Equalizing the Gross Premiums Tax on Article 65 Corporations to That of Other Insurance Contracts; Conforming Change With Respect to HMOs:** There were two changes to this subdivision. The first change addresses Article 65 corporations. S.L. 2003-284 amended G.S. 105-228.5(d)(2) and repealed G.S. 105-228.5(d)(5) to subject gross premiums on insurance contracts issued by Article 65 corporations to the same tax rate as other insurance contracts. The amendment was effective for taxable years beginning on or after January 1, 2004 but also had a conditional sunset date once there were no more Article 65 corporations that offered medical or hospital service plans. The sunset was included so that once Blue Cross Blue Shield became a for-profit company, other Article 65 corporations would return to the favorable tax rates previously afforded Article 65 corporations. The sunset language in section 43.4 of S.L. 2003-284 has been

repealed because Blue Cross Blue Shield announced its intention not to pursue conversion to for-profit at this time.

The second change addresses HMOs. A conforming change was made to this subdivision to recognize that gross premiums on insurance contracts issued by HMOs will be taxed at the same rate as other insurance contracts.

(Change related to Article 65 corporations effective September 27, 2005; HB 105, s. 51, S.L. 05-435; change related to HMOs effective for taxable years beginning on or after January 1, 2007; HB 105, s. 57(a), S.L. 05-435.)

**G.S. 105-228.5(d)(6) – Equalizing the Gross Premiums Tax on Health Maintenance Organizations (HMOs) to That of Other Insurance Contracts:**

HMOs first became subject to the gross premiums tax for taxable years beginning on or after January 1, 2003. Since that time, HMOs have enjoyed preferential tax rates compared to other insurance contracts. This subdivision is repealed effective for taxable years beginning on or after January 1, 2007. As a result, gross premiums on insurance contracts issued by HMOs will be taxed at 1.9% under G.S. 105-228.5(d)(2).

Subsection (f) of G.S. 105-228.5 requires insurance companies with a premium tax liability of \$10,000 or more (not including the additional local fire and lightning tax) to prepay their gross premiums tax in three equal quarterly installments, with each installment equal to one-third of their preceding year's tax liability. The installments are due on or before April 15, June 15, and October 15. An uncodified provision provides an exception to the general rule for HMOs for the tax year 2007. For that year, HMOs are required to make two installments, with each installment equal to one-half of the estimated tax liability for 2007. The first installment is due on or before April 15, 2007 and the second installment is due on or before June 15, 2007.

(Increase in rate effective for taxable years beginning on or after January 1, 2007; SB 622, s. 38.4(a), S.L. 05-276; prepayment of tax exception effective for taxable years beginning on or after January 1, 2007; SB 622, s. 38.4(c), S.L. 05-276.)

## **GENERAL ADMINISTRATION**

**G.S. 105-228.90(b)(1b) – Reference to the Internal Revenue Code Updated:**

This subdivision was amended in two steps. The first amendment updated the reference to the Internal Revenue Code from May 1, 2004 to January 1, 2005, but not including the amendments to section 164 of the Code by section 501 of P.L. 108-357. Any amendments to the Internal Revenue Code enacted after May 1, 2004 that increase North Carolina taxable income for the 2004 taxable year become effective for taxable years beginning on or after January 1, 2005. This

amendment conforms North Carolina tax law to the tax provisions of the federal Working Families Tax Relief Act of 2004, P.L. 108-311, enacted on October 4, 2004, and the American Jobs Creation Act of 2004, P.L. 108-357, enacted on October 22, 2004, with the exception of the federal provision that allows a taxpayer to deduct state and local general sales tax in lieu of the deduction for state and local income tax. The first amendment is effective August 13, 2005.

**Note:** This implies that, with the exception of the sales tax deduction, North Carolina has conformed to all of the tax provisions of the two federal Acts. However, a separate provision in G.S. 105-130.5(a) results in the State effectively not conforming to the federal election available to corporations with income from international shipping activities to exclude the income from gross income and to be subject instead to a tonnage tax. Separate provisions in G.S. 105-130.5(a) and G.S. 105-134.6(c) result in the State not conforming to the federal phased-in deduction for part of a taxpayer's net income attributable to domestic production activities.

The second amendment did not change the date reference but did delete the language regarding the exception for the sales tax deduction. This implies that North Carolina has conformed to the federal provision that allows a taxpayer to deduct state and local general sales tax in lieu of the deduction for state and local income tax. However, a separate provision in G.S. 105-134.6(c) results in the State effectively not conforming to the federal election to deduct state and local sales tax. The second amendment is effective for taxable years beginning on or after January 1, 2005.

**Note:** The two-step change regarding the sales tax deduction was necessary to permit the State to not follow the sales tax deduction provision without retroactively increasing a taxpayer's income tax liability. The sales tax deduction was effective for taxable year 2004. If the General Assembly had adopted the federal changes and then required an addition to federal taxable income for 2004, the taxpayer's tax liability would have been retroactively increased because the law change was not enacted until 2005.

(First amendment effective August 13, 2005; SB 622, s. 35.1(a), S.L. 05-276; second amendment effective for taxable years beginning on or after January 1, 2005; SB 622, s. 35.1(d), S.L. 05-276.)

**G.S. 105-236(2) – Penalties:** This statute was amended to allow the Department to assess a penalty on motor fuels taxpayers that fail to get licensed as required by statute.

(Effective January 1, 2006; HB 105, s. 1, S.L. 05-435.)

**G.S. 105-241(b) – Electronic Payment:** This statute was amended to require electronic payment of all returns that are filed electronically under Article 36C or Article 36D.

(Effective September 27, 2005; HB 105, s. 2, S.L. 05-435.)

**G.S. 105-241.1(e) – Technical Change:** This subsection regarding the statute of limitations was amended to delete an obsolete reference to former inheritance tax statute G.S. 105-29 and replace it with a current reference to G.S. 105-32.8 for estate tax.

(Effective September 27, 2005; HB 105, s. 36, S.L. 05-435.)

**G.S. 105-259(a)(2) – Disclosure:** This subdivision was amended to provide that “the amount of tax refunds paid to a governmental entity listed in G.S. 105-164.14(c) or to a State agency” is not considered “tax information.” As a result, the disclosure of that information is not prohibited.

(Effective September 27, 2005; HB 105, s. 32(b), S.L. 05-435.)

**G.S. 105-259(b) – Technical and Conforming Changes; Change to Effective Date of Authority to Disclose; Additional Authority to Disclose:** This subsection was amended to expand the authority to disclose tax information under one guideline, to make a technical change, to make two conforming changes, to change the effective date of one subdivision permitting disclosure of tax information, and to add 6 additional subdivisions that permit disclosure of tax information.

The expanded authority is in subdivision (6a). This subdivision was amended to allow the Department to furnish information on refunds authorized under G.S. 105-164.14(f) to designated city officials in addition to designated county officials.

The first conforming change is to subdivision (16a). The reference was changed to the North Carolina Self-Insured Security Association to conform with the statutory change to the name of the Association in G.S. 97-130. The technical change is to subdivision (17). The amendment recognizes that the Business License Information Office has been transferred from the Department of the Secretary of State to the Department of Commerce. The second conforming change is to subdivision (27) and adds cites for the additional statutes under which the Department of Revenue publishes reports of tax incentives taken by taxpayers to conform to the additional reporting requirements included in Senate Bill 393.

New subdivision (30) authorizes the Department to publish the information required under new G.S. 105-129.54 and to prove that a business does not meet the definition of “small business” under Article 3F because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount. The effective date for subdivision (30) was later amended to clarify that the authority to disclose sunsets for business activities

occurring in taxable years beginning on or after January 1, 2020. This is the same date that the tax credit for which the disclosure applies sunsets.

New subdivision (31) was added to authorize the Department of Revenue to verify with a related entity or strategic partner information relating to that entity that is provided by a taxpayer in support of a tax credit claimed under Article 3G.

A new subdivision (32) to allow the Department to provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly. The report includes the amount of refunds, identified by taxpayer, claimed under G.S. 105-164.14(c)(2b) and (2c).

A second subdivision (32) was added to authorize the Department of Revenue to provide to a taxpayer claiming a credit under Article 3G information from a related entity or strategic partner to the extent the information was used by the Department to adjust the amount of tax credit claimed by the taxpayer. The Codifier of the Statutes will renumber the subdivisions to rectify the use of the same subdivision number for two disclosure authorizations.

New subdivision (33) was added to authorize the Department of Revenue to provide tax information to the North Carolina State Lottery Commission for the purpose of determining whether a person meets the requirements set out in G.S. 18C-141 to be a lottery game retailer. One of those requirements is that the person must be current in filing all applicable State tax returns and in payment of all taxes, penalties, and interest owed the State.

New subdivision (34) was added to authorize the Department of Revenue to publish the information required under new G.S. 105-130.47 and G.S. 105-151.29 and to exchange information concerning those credits with the North Carolina Film Office of the Department of Commerce and the regional film commissions.

(Expanded authority in subdivision (6a) effective September 27, 2005; HB 105, s.32(c), S.L. 05-435; technical change and additional authority in subdivision (32) regarding Article 3G credit information effective September 27, 2005; HB 105, s. 37, S.L. 05-435; first conforming change effective January 1, 2006, SB 319, s. 20, S.L. 05-400; second conforming change effective September 22, 2005; SB 393, s. 2.13, S.L. 05-429; additional authority in subdivision (30) effective for business activities occurring on or after May 1, 2005; HB 1414, s. 32D.3, S.L. 04-124; change to effective date of subdivision (30) effective September 27, 2005; HB 105, s. 48, S.L. 05-435; additional authority in subdivision (31) effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005; SB 2, s. 4, S.L. 04-204 Extra Session; HB 105; additional authority in subdivision (32) regarding LEA sales tax reporting effective July 1, 2005; SB 622, s.7.27(b), S.L. 05-270; additional authority in subdivision (33) effective for taxable years beginning on or after January 1, 2005;

SB 622, s. 31.1(cc), S.L. 05-276; additional authority in subdivision (34) effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005; SB 622, s. 39.1(c), S.L. 05-276.)

**G.S. 105-269.14 – Use Tax Line on the Individual Income Tax Return:** The law was rewritten to extend the inclusion of a line on the individual income tax return for reporting use tax on non-business purchases through the 2009 tax year. The provision had been scheduled to sunset for taxable years beginning on or after January 1, 2005.

(Effective August 13, 2005; SB 622, s. 33.24, S.L. 05-276.)

## PROPERTY TAX

**G.S. 105-277.2 - 105-277.7: Clarify the Property Tax Statutes Relating to Present-use Value Eligibility and Amend the Period for Appeal of a Present-use Value Determination or Appraisal.** This law codifies existing practice among county assessors and makes technical changes. The proposed committee substitute also clarifies the tax year for motor vehicles that are switched from an annual system of registration to a staggered system.

Section 1 amends the definition of horticultural land to allow some types of land currently classified as horticultural to be classified as agricultural. Section 2 changes the definition of unit. Under current law, farmland must be part of a unit engaged in commercial production to qualify for present-use value classification. If the unit is composed of multiple tracts, these tracts must be under the same ownership. Also, if the tracts are located within different counties, they must be within 50 miles of a tract that meets the definition of farmland and either share the same classification or use the same equipment or labor force. Section 2 would eliminate the qualification under use of the same equipment or labor force.

Section 3 amends the section of the statute that allows exceptions to ownership requirements of present-use classification. The current law allows an exception to ownership requirements when use-value land is transferred to a person who continues to use it as farmland and meets the other conditions for use value treatment and assumes deferred liability for taxes accrued under the previous owner. This proposal codifies the recognized practice of allowing an exception when there is no deferred liability upon transfer of the land. This occurs when the land being transferred is not appraised and taxed at the present-use value at the time of transfer.

Sections 4 and 7 add language that establishes 60 days as the time for a taxpayer to appeal an assessor's decision regarding the qualification or appraisal of the taxpayer's property as use-value property. The 60-day timeframe would

also apply as the time period for taxpayers to submit additional information to reverse a disqualification of property for present-use classification.

(Effective for taxes imposed on or after July 1, 2005; HB 116, S.L. 05-313.)

**G.S. 105-277.3: Allow Buyout Payments to Count Towards the One Thousand Dollar Gross Income Requirement for Agricultural Land for Present-use Value Taxation.** This law allows payments received under the tobacco quota buyout program to be counted towards the \$1,000 income requirement, which must be met before agricultural land can be assessed at present-use value for property tax purposes.

(Effective for taxes imposed on or after July 1, 2005; HB 705, S.L. 05-293.)

**N.C.G.S. 105-278.3 and N.C.G.S. 105-278.7: Expand the Property Tax Exemptions for Cultural and Literary Properties.** Allow for Real and Personal Property used for cultural purposes and literary purposes to included non-profit theaters.

(Effective September 27, 2005; HB 105, S.L. 05-435.)

**SECTION 46.2 (a) adopts The Joint Conference Committee Report on Continuation, Expansion and Capital Budgets, dated August 8, 2005:** Twenty-five thousand dollars (\$25,000) in funding each year is made available to conduct a survey of cash rents paid for farmland relating to the present use-value property tax program for use by the Department of Revenue and the Use-Value Advisory Board.

(Effective July 1, 2005; SB 622, S.L. 05-276.)

**G.S. 105-330 – A Combined Motor Vehicle Registration Renewal and Property Collection System:** The following are the high points of this law:

1. Taxes will be collected by DMV and its agents.
2. Taxes are due at the time the registration is renewed or purchased.
3. Counties will still situs and appraise the motor vehicles.
4. There will be one computer system that all counties will use to situs and appraise the vehicles.
5. A schedule of values for motor vehicles will be approved by NCDOR.
6. The billing will be centralized and controlled by NCDOR.
7. The interest for the first month on unpaid motor vehicle taxes will be increased from 2% to 5% effective January 1, 2006.
8. The additional 3% interest on unpaid motor vehicle taxes is to be remitted to the State Treasurer and to be used to pay for the new computer system.



9. A report is to be filed with the General Assembly by NCDOR and NCDMV by April 2006 detailing a plan for putting this system in place.

(Sections 4 and 8 effective January 1, 2006; remaining sections effective July 1, 2009; HB 1779, S.L. 05-294.)

**G.S. 105-330.2(b) - Prohibits Tax Assessors Who Use The Sales Price for Appraisal of Motor Vehicles From Including Any Highway Use Tax.** For purposes of determining the property tax owed on the vehicle, the assessor cannot include the highway use tax in the appraisal.

(Effective for taxable years beginning on or after July 1, 2005; HB 988, S.L. 05-303.)

**G.S. 105-330.5(a) and G.S. 105-330.6: Tax Assessors to Calculate Tax Bills, Corresponding with the One-Time Adjusted Registration Period for Vehicles.** Motor Vehicles converting from the annual to the staggered system due to S.B. 1083 passed during the 2004 Session of the NC General Assembly. Section 9 amends the property tax motor vehicle statutes by allowing for a motor vehicle tax year other than 12 months to correspond with the 7-18 month registration periods that will be issued. Section 9 also makes the necessary changes to the pro-ration statutes that originally assumed a 12-month motor vehicle tax year.

(Effective January 1, 2006; HB 116, S.L. 05-313.)

**G.S. 105-357: Allow the Payment of Taxes By Offset of an Obligation.** Removes the prohibition against payment of taxes by offset that arise from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the taxes were levied.

(Effective June 23, 2005; SB 537, S.L. 05-134.)

**G.S. 161-31: Collection of Delinquent Property Taxes.** Adds Johnston, Onslow, Robeson and Surry counties to the list of counties which may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent taxes are a lien on the property described in the deed.

(Effective June 23, 2005; HB 131, S.L. 05-109.)

## MOTOR FUELS TAX

**G. S. 105-449.39 – Conforming:** This statute was amended to conform refund processing to that of all other tax schedules as identified in G.S. 105-266(a)(3).

(Effective September 27, 2005; HB 105, s. 3, S.L. 05-435.)

**G. S. 105-449.44(a) – Clarifying:** This statute was amended to conform to the reporting requirements outlined in the IFTA agreement. The current calculation was the method used prior to becoming an IFTA member in 1991.

(Effective September 27, 2005; HB 105, s. 4, S.L. 05-435.)

**G. S. 105-449.46 – IRP Audit Authorization:** This statute was amended to provide the Secretary and the authorized agents to inspect the books and records for International Registration Plan purposes. The audit functions transferred to DOR in 2004, however, the financial record keeping has remained with DOT.

(Effective September 27, 2005; HB 105, s. 5, S.L. 05-435.)

**G.S. 105-449.47(a1) – Remove Dated Statute References:** This statute was amended to remove the reference to former statutes, which were changed effective 1/1/96. Those statutes are either out of statute for assessing or the uncollectible assessments have been written off.

(Effective September 27, 2005; HB 105, s. 6, S.L. 05-435.)

**G. S. 105-449.47A – Denial of Registration:** This statute was added to enable the Department to only register taxpayers who are in good standing with the Department and with other jurisdictions.

(Effective January 1, 2006; HB 105, s. 7, S.L. 05-435.)

**G. S. 105-449.51 – Simplification:** This statute was amended to simplify the penalties imposed on Class 3 misdemeanors and to ensure that the penalty is greater, on the criminal penalty, than on the civil penalty, which is \$100.00.

(Effective January 1, 2006; HB 105, s. 8, S.L. 05-435.)

**G. S. 105-449.65(b) – Clarifying:** This statute was amended to clarify motor fuels licensing requirements and to conform to current Department policy for licensing.

(Effective January 1, 2006; HB 105, s. 9, S.L. 05-435.)

**G. S. 105-449.69(b) – Conforming:** This statute was amended to conform to legislative changes made during the 1999 legislative sessions. In 1999, legislation was passed to remove the licensing requirements for bulk-end users and retailers of undyed diesel fuel.

(Effective September 27, 2005; HB 105, s. 10, S.L. 05-435.)

**G. S. 105-449.73 – Conforming:** This statute was amended to conform to current collections procedures for forced collections.

(Effective September 27, 2005; HB 105, s. 11, S.L. 05-435.)

**G. S. 105-449.86(a) – Dyed Fuel Use:** This statute was amended to repeal the statute that provides for taxation of the American Red Cross. The American Red Cross is deemed an agency of the federal government. The statute further removed intercity buses from the entities that may use dyed diesel fuel.

(Effective September 27, 2005; HB 105, s. 12, S.L. 05-435.)

**G. S. 105-449.90A – Obsolete:** This statute was amended to remove the ability of a person, exporting product to another state, to pay the tax directly to the Department if the person is not licensed in the destination state of the motor fuel. This provision was included in the statutes in 1996 to accommodate persons exporting product to a state not collecting tax at the terminal rack. With the exception of Georgia, all of the surrounding states are now tax at the rack states, which makes this portion of the statutes obsolete.

(Effective September 27, 2005; HB 105, s. 13, S.L. 05-435.)

**G. S. 105-449.96 – Conforming:** This statute was amended to conform to the reporting requirements currently in place with the suppliers.

(Effective September 27, 2005; HB 105, s. 14, S.L. 05-435.)

**G. S. 105-449.106 – Correction to Catch Line:** This statute was amended to correct the catch line due to legislative changes made during the 2003 legislative session. In 2003, legislation was passed to exempt sales to counties and municipal corporations. The refund is due under G.S. 105-449.105.

(Effective September 27, 2005; HB 105, s. 15, S.L. 05-435.)

**G. S. 105-449.107(b) – Refundable Uses:** This statute was amended to include two additional fuel uses that are refundable: sweepers and power takeoff vehicles that remove and dispose of septage for which an annual fee has been paid to the Department of Environment and Natural Resources. The refund amount is one-third of the fuel used in the operations of the vehicle.

(Effective for motor fuel and alternative fuel consumed on or after January 1, 2006; SB 356, s. 1, S.L. 05-377.)

**G. S. 105-449.115(f) – Conforming:** This statute was amended to allow payment of certain civil penalties to be made to the Department of Crime Control and Public Safety. This change was made necessary with the reorganization of the Department of Transportation, Division of Motor Vehicles section.

(Effective January 1, 2006; HB 105, s. 16, S.L. 05-435.)

**G. S. 105-449.115(g) – Penalty Defense:** This statute was amended to allow a defense against the diversion penalty assessed. The two defense conditions are (1) notification of the diversion within seven days and (2) timely payment of the tax on the diverted fuel.

(Effective September 27, 2005 for all diversion penalties imposed on or after January 1, 2005; HB 105, s. 16, S.L. 05-435.)

**G. S. 105-449.115(h) – Penalty:** This statute was amended to impose a civil penalty of \$5,000 against the terminal operator who intentionally issues shipping documents not meeting the minimum requirements set by subsection (b) of this section.

(Effective January 1, 2006; HB 105, s. 16, S.L. 05-435.)

**G. S. 105-449.115A – Penalty:** This statute was amended to enforce the same document requirements for tank wagon trucks when motor fuel is loaded at the terminal as for the transport trucks.

(Effective September 27, 2005; HB 105, s. 17, S.L. 05-435.)

**G. S. 105-449.123 – Penalty:** This statute was amended to impose a civil penalty equal to the amount of the tax due on a person who intentionally fails to mark the storage facility as required by this section.

(Effective January 1, 2006; HB 105, s. 18, S.L. 05-435.)

**G. S. 20-91 – Conforming:** This statute was amended to remove the language giving authority to audit from the Division to the Department of Revenue.

(Effective September 27, 2005; HB 105, s. 22, S.L. 05-435.)

**G. S. 119-15 – Definition:** This statute was amended to include a definition in the inspection tax laws for distributors who purchase only dyed diesel fuel for import into the State. This change is due to the imposition of inspection tax on dyed diesel during the 2003 legislative session.

(Effective September 27, 2005; HB 105, s. 19, S.L. 05-435.)

**G. S. 119-15.1(a) – License Requirement:** This statute was amended to include distributors who purchase only dyed diesel fuel for import into the State in the list of those who must have a license.

(Effective September 27, 2005; HB 105, s. 20, S.L. 05-435.)

**G. S. 119-15.3(a) – Clarifying:** This statute was amended to clarify that acceptance of an irrevocable letter of credit is conditional in the same manner as a surety bond.

(Effective September 27, 2005; HB 105, s. 21, S.L. 05-435.)

## DEBT SETOFF

**G.S. 105A-2(6) – Definitions Expanded:** The definition of a “Local Agency” has been expanded to include “a public health authority” created under Part 1B of Article 2 of Chapter 130A of the General Statutes; “a metropolitan sewerage district” created under Article 5 of Chapter 162A of the General Statutes; and “a sanitary district” created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(Effective January 1, 2006, and applies to income tax refunds determined on or after that date; SB 682, s. 1, S.L. 05-326.)

**G.S. 105A-8(a) – Technical Change:** This subsection has been amended to correct an incorrect reference by changing the reference to subsection (e) to subsection (d). There is no subsection (e) in this section.

(Effective September 27, 2005; HB 105, s. 42, S.L. 05-435.)

## IDENTITY THEFT PROTECTION ACT

**Chapter 75, Article 2A:** The 2005 General Assembly amended Chapter 75 of the General Statutes by enacting new Article 2A, the Identity Theft Protection Act. The Act requires businesses and government to take certain steps to protect an individual’s personal identifying information and provides remedies for failure to do so. With respect to the Department’s use of an individual’s social security number, the Department may not print an individual’s social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed may not be printed, in whole

or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(Effective July 1, 2007, SB 1048, s. 4, S.L. 05-414.)

## **JOB DEVELOPMENT INVESTMENT GRANT PROGRAM**

### **G.S. 143B, Article 10, Part 2G – Job Development Investment Grant**

**Program:** The 2002 General Assembly created a new economic development tool for new and expanding businesses in North Carolina called the Job Development Investment Grant Program (JDIG) whereby eligible companies selected by an Economic Investment Committee of State officials will be provided a grant equal to a certain percentage of the company's income tax withholding payments.

The 2005 General Assembly amended JDIG to extend the authority of the Committee to enter into new agreements until January 1, 2008 (was January 1, 2006). As a provision of the program, a business is eligible for a JDIG grant only if the company provides health insurance to all full-time employees of the project with respect to which the grant is made. JDIG was also amended to specify that an applicable full-time employee is one who earns from the business less than \$150,000 in taxable compensation on an annual basis or three and one-half times the annualized average State wage for all insured private employers in the State employing between 250 and 1,000 employees, whichever is greater. The amendment effectively removes certain high-income employees from the health insurance coverage requirement.

(Amendments above effective July 29, 2005, HB 1004, ss. 3 and 5. S.L. 05-241.)