NORTH CAROLINA
DEPARTMENT OF REVENUE

TAX ADMINISTRATION

2006 Tax Law Changes

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 tax law:

- changes made by prior General Assemblies that take effect for tax year 2006, as well as,

- changes made by the 2006 General Assembly, regardless of when they take effect.

The local sales and use tax changes follow the State sales and use tax changes. 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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HIGHLIGHTS

During the 2006 session, numerous changes were made to the State's revenue laws. While all tax changes made are included in this document, as well as previous changes that take effect in 2006, some of the most significant changes are outlined below. This section is intended to provide a brief overview. For a more extensive summary and a list of all modifications, please check the appropriate section of this document.

Personal Taxes (page 7)

- The 8.25% rate levied on individual income was reduced to 8.0%, effective for taxable years beginning on or after January 1, 2007, and reduced to 7.75% effective for taxable years beginning on or after January 1, 2008.
- A new deduction was created for investment in the State's 529 college savings plan, effective beginning with the tax year 2006.
- A new joint filing option was enacted to assist nonresident taxpayers.
- The expense thresholds on the state child care tax credit were increased to $3,000 and $6,000, to conform to the federal limitations.
- Income earned through an S corporation is now subject only to individual income tax adjustments.

Corporate, Franchise, and Insurance Tax Changes (page 13)

- The royalty reporting option for payment of trademark royalties to related corporations was extended to patent and copyright royalties.
- LLCs that elect to be taxed as corporations for federal income tax purposes are now subject to the general business franchise tax. This applies to taxable years beginning or after January 1, 2007.
- The Department's current tax treatment of deferred tax assets, as defined in CTAM 97-4, was codified.

Other Tax Credits (Applies to Multiple Schedules) (page 24)

- A new small business health insurance credit was created, effective January 1, 2007.
- The sunset of the William S. Lee Act was moved up to January 1, 2007 from January 1, 2008. The Act was also modified through the creation of agrarian growth zone provisions and an expanded definition of a development zone.
- Modifications were made to the existing renewable fuel credits to make production of renewable fuel more attractive.
- A credit to encourage revitalization of historic mill facilities was enacted.
- The film incentive was modified to eliminate expense-based add-backs.
- A new credit was created for the donation of oyster shells to the Department of Environment and Natural Resources.

Sales Tax (page 48)

- The State sales tax rate was reduced from 4.5% to 4.25%, effective December 1, 2006. The sunset of the remaining 0.25%, lowering the State rate from 4.25% to 4.0%, continues to be July 1, 2007.
- The taxes on video services were substantially rewritten, providing a uniform State rate for video programming services provided by cable, telecommunication, or any other type provider. The legislation also eliminates local franchise taxes on these services, in certain circumstances, with a payment from the State to local units as a replacement for this taxing authority.
- The sales tax rate for electricity sold to manufacturers was reduced from 2.83% to 2.6%, effective July 1, 2007.
- A new 50% sales tax refund for motorsports racing teams was enacted, while the refund they enjoy on aviation fuel was extended.
- Local school administrative units are now eligible for a refund of local sales taxes paid.
- New exemptions were created for electricity and eligible business property sold to Internet data centers and logging machinery.
- Certain types of R&D equipment purchases will be exempt from sales tax and subject to the 1% privilege tax effective July 1, 2007.
- Several changes were made to conform to the streamlined sales tax agreement including new definitions of telecommunications services, ancillary services, and prepaid wireless calling. A new sales tax payment schedule for semi-monthly payers was also established.

Property Tax (page 70)

- New provisions allow electronic listing of individual personal property.
- County boards of equalization and review were given the authority to approve late applications for present use value.
- Property sellers are now relieved of personal liability for property taxes when the property transfers before taxes become delinquent.
- The effective date of the combined vehicle registration and property tax payment system was extended to 2010.

Motor Fuels (page 73)

- The variable portion of the gas tax was capped at current rate of 12.4 cents per gallon, effective July 1, 2006 through June 30, 2007.

PERSONAL TAXES

ESTATE TAX

G.S. 105-32.2(b) – North Carolina Estate Tax Liability Clarified: This subsection was amended to clarify that the amount of North Carolina estate tax cannot exceed the amount of federal estate tax determined without regard to the deduction for state death taxes allowed under section 2058 of the Internal Revenue Code and the tax credits allowed under sections 2011 through 2015 of the Code.

(Applies to estates of decedents dying on or after January 1, 2005; HB 1963, s. 26, S.L. 2006-162.)

G.S. 105-32.8 – Time for Reporting Federal Corrections Amended: Under prior law, if the federal government corrected or otherwise determined gross estate tax, the personal representative had two years to report the changes to the Department of Revenue. As amended, the period for reporting federal corrections or determinations for estate tax purposes has been reduced to six months.

(Effective July 1, 2006 and applies to federal determinations made on or after that date; HB 1892, s. 3, S.L. 2006-18.)

INDIVIDUAL INCOME TAX

G.S. 105-134.2(a) – Repeal of the 8.25% Tax Rate to be Accelerated: This subsection was amended to repeal the 8.25% income tax rate that applied to higher income taxpayers in two phases. The rate will be reduced to 8% for tax years beginning on or after January 1, 2007 and to 7.75% for tax years beginning on or after January 1, 2008. The 8.25% rate was scheduled to expire, for taxable years beginning on or after January 1, 2008.

(The 8% rate is effective for taxable years beginning on or after January 1, 2007 and the 7.75% rate is effective for taxable years beginning on or after January 1, 2008; SB 1741, ss. 24.2 (a), (b), and (c), S.L. 2006-66.)

G.S. 105-134.6(a) – Conforming Change: This subsection was amended to conform to the changes to G.S. 105-131.2 regarding adjustments required by shareholders of S corporations. Consequently, an individual's pro rata share of income from an S corporation is subject only to the individual income tax adjustments in G.S. 105-134.6 rather than being subject to both individual and corporate income tax adjustments.

(Effective for taxable years beginning on or after January 1, 2006; HB 1898, s. 2, S.L. 2006-17.)

G.S. 105-134.6(c)(3a) – Addition for a shareholder's share of an S corporation's built-in gains tax deducted by the shareholder in determining federal taxable income: New subdivision (3a) was enacted to require a shareholder of an S corporation to make an addition to federal taxable income for the shareholder's share of built-in gains tax that the S corporation paid for federal income tax purposes. Because the income subject to the built-in gains tax is taxed at both the S corporation and shareholder level for federal income tax purposes, federal law allows the shareholder to deduct his pro rata share of the built-in gains tax to provide relief from double taxation. North Carolina does not impose a built-in gains tax; therefore, there is no double taxation for State income tax purposes and no reason to allow the deduction for the shareholder's share of the built-in gains tax.

(Effective for taxable years beginning on or after January 1, 2006; HB 1898, s. 3, S.L. 2006-17.)

G.S. 134.6(c)(5a) – Conforming Change: This subdivision was added to require an addition to federal taxable income for the market price of oyster shells for which a taxpayer claims a tax credit for recycling oyster shells under G.S. 105-151.30.

(Effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011; SB 1741, s. 24.18(e), S.L. 2006-66.)

G.S. 105-134.6(c)(9) – Addition for Expenses Used to Calculate Credit for a Film or Television Production Repealed: This subdivision, which required an addition to federal taxable income for qualifying expenses for which a taxpayer claimed a credit under G.S. 105-151.29, was repealed.

(Effective for taxable years beginning on or after January 1, 2007; HB1522, s. 3, S.L. 2006-220.)

G.S. 134.6(d) (4) and (5) – Parental Savings Trust Fund Deduction: Subdivisions (4) and (5) were added as new adjustments required in calculating North Carolina taxable income. Subdivision (4) provides a maximum deduction of up to $750 ($1,500 for married individuals filing a joint return) for contributions to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. The deduction is allowed only if federal adjusted gross income is less than the following amounts (Married filing jointly/Qualifying widow(er) - $100,000; Head of household - $80,000; Single - $60,000; and Married filing separately - $50,000).

Subdivision (5) requires an addition to taxable income for any amounts that were contributed to the Parental Savings Trust Fund and deducted in a prior year that were withdrawn and used for purposes other than the qualified higher education expenses of

the designated beneficiary unless the withdrawal was due to the death or permanent disability of the designated beneficiary.

(Effective for taxable years beginning on or after January l, 2006; SB 1741, s. 24.12(a), S.L. 2006-66.)

The provisions in subdivision (4) were subsequently amended by Senate Bill 198 to increase the maximum deduction for contributions to the Fund to $2,000 ($4,000 on a joint return). The amendment is effective for tax years beginning on or after January 1, 2007 and applies to contributions to the Fund made on or after that date.

(As amended, the provision is effective for taxable years beginning on or after January 1, 2007; SB 198, ss. 27 (a) and (b), S.L. 2006-221.)

G.S. 105-151.11(b) – Employment Related Expenses for Determining State Child Care Credit Increased to Federal Amounts: Under prior law, the State child care tax credit was based on maximum employment-related expenses of $2,400 for one qualifying dependent and $4,800 for two or more qualifying dependents. Subsection (b) was amended to conform the expense amounts to the federal amounts of $3,000 for one qualifying dependent and $6,000 for two or more qualifying dependents. This subsection was also amended to clarify that the amount of employment-related expenses for which a credit may be claimed must be reduced by the amount of employer-provided dependent care assistance excluded from gross income.

(Effective for taxable years beginning on or after January 1, 2006; HB 1892, s. 9, S.L. 2006-18.)

G.S. 105-151.12(f)– Credit for Certain Real Property Donations: Under G.S. 105-269.15(a), the maximum dollar limit on a tax credit applies to the partnership as a whole rather than to each of the individual partners. The 2001 General Assembly made an exception to this provision for partnerships claiming the tax credit for real property donations so that the dollar limit on the amount of a tax credit will apply to the individual partners rather than the partnership. This exception was set to expire for taxable years beginning on or after January 1, 2006. However, the law was amended to extend the exception until tax years beginning on or after January 1, 2007.

(Effective July 10, 2006; SB 1741, s 24.15(a), S.L. 2006-66.)

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. 2005-276.)

G.S. 105-151.26 – Credit for Charitable Contributions by Nonitemizers: Under prior law, the charitable contribution credit may not be claimed for contributions for which the credits for certain real property donations and gleaned crops are claimed. This section was amended to include contributions for which the credit for recycling oyster shells was claimed. Therefore, the credit for charitable contributions and the credit for donating real property, gleaned corps, or oyster shells may not be claimed for the same donation.

(Effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011; SB 1741, s 24.18(d), S.L. 2006-66.)

G.S. 105-151.29 – Film Incentives Tax Credit Definitions Amended: Subdivisions (1), (2), and (4) of subsection (a) were amended to revise the definitions of "highly compensated individual," "live sporting event," and "qualifying expenses." The definition of "highly compensated individual" in subdivision (a)(1) was rewritten to apply to an individual who receives compensation in excess of $1,000,000 for personal services with respect to a single production, regardless of whether the individual receives compensation directly from the production company or indirectly from a personal services company or an employee leasing company and regardless of whether the compensation is considered wages or nonemployee compensation. The definition of "live sporting event" in subdivision (a)(2) was amended to make stylistic changes. The definition of "qualifying expenses" in subdivision (a)(4) was rewritten to move the reference to "highly compensated individual" in subsection (a)(1) regarding compensation being either wages or nonemployee compensation. Subparagraph b of subdivision (a)(4) was also rewritten to clarify that the withholding of income tax from wages does not have to be done by the production company to conform with the change to the definition of "highly compensated individual" regarding the receipt of compensation directly from the production company or indirectly from a personal service company or an employee leasing company.

(Effective for taxable years beginning on or after January 1, 2006; HB 1963, s. 4(b), S.L. 2006-162.)

G. S. 105-151.29(i) – Addition for Expenses Used to Calculate Credit for a Film or Television Production Repealed: This subsection, which provided that a taxpayer cannot claim both a tax credit under G.S. 105-151.29 and a deduction for the same expenses and required a taxpayer claiming a credit under this section to make an addition to federal taxable income for the expenses used to calculate the credit as provided in G.S. 105-134.6(c)(9), was repealed.

(Effective for taxable years beginning on or after January 1, 2007; HB1522, s. 4, S.L. 2006-220.)

G.S. 105-151.30 – Tax Credit for Recycling Oyster Shells: This section was added to provide a tax credit to a taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources. The credit is $1.00

per bushel of oyster shells donated. The credit may not exceed the amount of tax for the taxable year reduced by the sum of all credits allowable, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit can be carried forward for the succeeding five years.

To support the credit, a taxpayer must obtain a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells that were donated.

A taxpayer who claims the credit must add back to taxable income any amount deducted under the Code for the donation of the oyster shells.

(Effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011; SB 1741, s. 24.18(c), S.L. 2006-66.)

G.S. 105-152(e) – Joint Return Option: Under prior law, a husband and wife who file a joint federal return must also file a joint State return if both are residents of North Carolina or both have North Carolina taxable income. However, if one spouse is not a resident of North Carolina and has no North Carolina income, the other spouse must file a separate State return. This subsection was amended to give a husband and wife who file a joint federal return the option of filing a joint State return if both spouses are nonresidents and only one spouse has North Carolina income or if only one spouse is a resident of North Carolina and the other spouse had no North Carolina income. The option to file a separate return is still available for such taxpayers since the State has no jurisdiction to require a person who is not a resident and does not have income from North Carolina sources to file a North Carolina return.

(Effective for taxable years beginning on or after January 1, 2006; SB 1741, s. 24.11(a), S.L. 2006-66.)

G.S. 105-155(a) – Time for Filing Returns by Nonresident Aliens Amended: This subsection was amended to conform the filing date for certain nonresident aliens to the date those individuals are required to file their federal income tax returns. Consequently, a return of a nonresident alien who has wages *not* subject to withholding is due on the 15th day of the 6th month after the close of the tax year (June 15 in the case of a calendar year taxpayer). A nonresident alien who has wages subject to withholding must file a return by the 15th day of the 4th month following the close of the tax year.

(Effective for taxable years beginning on or after January 1, 2006; HB 1892, s. 8, S.L. 2006-18.)

G.S. 105-159 – Time for Reporting Federal Corrections Amended: Under prior law, an individual whose federal taxable income was corrected or otherwise determined by the federal government had two years after being notified by the federal government to

report the changes to the Department of Revenue. As amended, the period for reporting federal corrections or determinations has been reduced to six months.

(Effective July 1, 2006 and applies to federal determinations made on or after that date; HB 1892, s. 5, S.L. 2006-18.)

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. 2005-345.)

G.S. 105-159.2 – North Carolina Public Campaign Fund: Subsection (b) was amended to require the Department of Revenue to include specific language on the face of the income tax return with respect to taxpayer fund designations.

(Effective for taxable years beginning on or after January 1, 2006; HB 1024, s. 18, S.L. 2006-192.)

G.S. 105-160.3(b) – Conforming Change: This subsection was amended to include the credit for recycling oyster shells provided in G.S. 105-151.30 as a credit that is not allowable to an estate or trust.

(Effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011; SB 1741, s. 24.18(f), S.L. 2006-66.)

WITHHOLDING TAX

G.S. 105-163.2B – Clarifying Change: This statute was amended to clarify that the North Carolina State Lottery Commission must deduct and withholding State income taxes from payment of lottery winnings of $600 or more.

(Effective August 27, 2006, SB 602, s. 91(b), S.L. 2006-264.)

S CORPORATION INCOME TAX

G.S. 105-131.2 – Amendment to Adjustments Required by Shareholders of S Corporations: Under prior law, a shareholder's pro rata share of income from an S corporation was subject to adjustments under either the corporate law (G.S. 105-130.5) or the individual law (G.S. 105-134.6) depending on the shareholder's residency status and whether the income was attributable to North Carolina. As amended, a shareholder

is subject only to the adjustments under individual law regardless of the shareholder's residency status or whether the income is attributable to this State.

(Effective for taxable years beginning on or after January 1, 2006; HB 1898, ss. 1 and 2, S.L. 2006-17.)

GIFT TAX

G.S. 105-197.1 – Time for Reporting Federal Corrections Amended: Under prior law, a taxpayer whose net gifts were corrected or otherwise determined by the federal government had two years after being notified by the federal government to report the changes to the Department of Revenue. As amended, the period for reporting the federal corrections or determinations has been reduced to six months.

(Effective July 1, 2006 and applies to federal determinations made on or after that date; HB 1892, s. 6, S.L. 2006-18.)

JOB DEVELOPMENT INVESTMENT GRANT PROGRAM

G.S. 143B, Article 10, Part 2G – The Job Development investment Grant Program is an economic development tool for new and expanding businesses in North Carolina whereby eligible companies selected by an Economic Investment Committee of State officials are provided a grant equal to a certain percentage of the company's income tax withholding payments. The statute was amended to extend the authority of the Economic Investment Committee to enter into new agreements with eligible companies until January 1, 2010 (was January 1, 2008).

The maximum amount of total annual liability that may be agreed to by the Economic Investment Committee in agreements entered into in 2006 was increased from $15 million to $30 million.

The statute was also amended to allow professional motorsports racing teams to qualify to enter into grant program.

(Effective July 27, 2006; HB 2744; ss.1.2 and 1.11, S.L. 2006-168.)

CORPORATE, EXCISE AND INSURANCE TAXES

GROSS RECEIPTS AMUSEMENT TAX

G.S. 105-40 – Additional Exemption: This section was amended by adding a new subsection (12) to exempt from the gross receipts amusement tax all farm-related

exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340.

(Effective retroactively to January 1, 1999 and applies to activities occurring on or after that date; HB 143, s. 1, S.L. 06-216.)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES

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 increased the amount of wine tax proceeds earmarked for the North Carolina Grape Growers Council. Under prior law, the Department of Revenue credited 100% of the net proceeds of both unfortified and fortified wine bottled in North Carolina to the Department of Commerce on a quarterly basis. The maximum to be credited was $500,000 per fiscal year. As amended, the Department will credit $200,000 of the net proceeds of the excise tax collected on unfortified wine to the Department of Commerce each quarter. The second change is a conforming change to recognize that the Grape Growers Council's name was changed to the North Carolina Wine and Grape Growers Council.

(Increase in earmarking effective July 1, 2007; HB 1025, s. 14, S.L. 06-227; conforming change effective August 27, 2006, SB 602, s. 98.3(b), S.L. 06-264.)

G.S. 105-113.82 – Conforming Change: This section was amended to recognize that the Grape Growers Council was transferred from the Department of Agriculture and Consumer Services to the Department of Commerce.

(Effective July 24, 2006; HB 1963, s. 1, S.L. 06-162.)

FRANCHISE TAX

G.S. 105-114 – Definition of Corporation Expanded; Conforming and Technical Changes: Two amendments were made to this section. First, subdivision (b)(2) was amended to expand the definition of "corporation." Under prior law, the term did not include limited liability companies (LLCs). Therefore, LLCs were not subject to the general business franchise tax imposed under G.S. 105-122. As amended, the term "corporation" includes LLCs that elect to be taxed as C corporations for federal income tax purposes and those LLCs are now subject to the general business franchise tax. The amendment is effective for taxable years beginning on or after January 1, 2007. Because the general business franchise tax imposed in G.S. 105-122 is for the tax year in which the tax becomes due, this amendment will impact the franchise tax reported on the 2006 income and franchise tax return since it is due on or after March 15, 2007. Second, subdivision (b)(4) was amended to conform to the recodification of the definition of income year in G.S. 105-130.2. The technical change corrected the

introductory language of section 59.2(a) of S.L. 2005-435, which erroneously referred to G.S. 105-114(a4) as G.S. 105-114.1(a4).

(Expansion of definition of corporation effective for taxable years beginning on or after January 1, 2007; SB 1741, s. 24A.2(a), S.L. 06-66; conforming change effective July 24, 2006; HB 1963, s. 2, S.L. 06-162; technical change effective July 24, 2006; HB 1963, s. 22, S.L. 06-162.)

G.S. 105-114.1 – Conforming Changes: This statute requires a corporation or affiliated group of corporations that own more than 50% of the capital interest in an LLC to include the same percentage of the LLC's assets in its three franchise tax bases. Subdivision (a)(5) was added to define "noncorporate limited liability company" as a limited liability company that does not elect to be taxed as a C corporation for federal income tax purposes and subsections (b) through (g) were amended to refer to noncorporate LLCs to conform to the imposition of the general business franchise tax on LLCs that elect to be taxed as corporations for federal income tax purposes. As a result, the attribution rules of this section do not apply to LLCs that are subject to franchise tax. The amendment is effective for taxable years beginning on or after January 1, 2007. Because the general business franchise tax imposed in G.S. 105-122 is for the tax year in which the tax becomes due, this amendment will impact the franchise tax reported on the 2006 income and franchise tax return since it is due on or after March 15, 2007.

(Effective for taxable years beginning on or after January 1, 2007; SB 1741, s. 24A.2(b), S.L. 06-66.)

G.S. 105-116(b) – Time for Paying Tax by Electric Power Companies; Technical Change: Under prior law, an electric power company paid its franchise tax due under G.S. 105-116 quarterly, monthly, or semimonthly based on when it was required to pay its sales and use tax.

As amended, an electric power company that is consistently liable for less than $100 per month in franchise tax is required to pay its tax on a quarterly basis. The tax is due at the same time the quarterly return is due. An electric power company that is consistently liable for more than $100 per month in franchise tax is required to pay its tax on a monthly basis. The tax is due by the 20th day of the month following the calendar month for which the payment applies. In addition, if an electric power company's liability is consistently at least $10,000 per month, the electric power company must prepay the next month's tax liability at the same time that it is paying the current month's liability. The prepayment must equal at least 65% of any of the following:

- The amount of tax due for the current month.
- The amount of tax due for the same month in the preceding year.
- The average monthly amount of tax due in the preceding calendar year.

The technical change corrected the prefatory language of section 10 of S.L. 2006-33, which erroneously referred to G.S. 105-116(b) as G.S. 105-113(b).

(Amendment to time for payment effective October 1, 2007; HB 1915, s. 10, S.L. 06-33; technical change effective July 24, 2006; HB 1963, s. 31, S.L. 06-162.)

G.S. 105-120.2(c) – Definition of Holding Company for Franchise Tax Purposes Revised: This subsection was rewritten to amend the definition of "holding company" for franchise tax purposes to conform with the amendment to G.S. 105-114 that subjects LLCs that elect to be taxed as a corporation for federal income tax purposes to the State's general business franchise tax. The amendment to the definition allows a corporation, when determining if it is a holding company for franchise tax purposes, to include gross income from LLCs that are taxed as a corporation in the numerator of the fraction if the corporation owns more than 50% of the voting capital interest in the LLC.

(Effective for taxable years beginning on or after January 1, 2007; HB 1891, s. 9, S.L. 06-196.)

G.S. 105-122(b) – Clarifying the Treatment of Deferred Tax Assets in the Calculation of the Franchise Tax Capital Stock Base: This subsection was amended to make stylistic changes and to statutorily adopt the Department of Revenue's intended administrative practice with respect to reducing the taxpayer's deferred tax liability account by its deferred tax asset account announced in Technical Advice Memorandum CTAM 97-4. A taxpayer is not allowed to reduce its capital stock base by its deferred tax liability account because those liabilities are not definite and accrued. Subdivision (b)(3) allows the taxpayer to reduce the deferred tax liability account by its deferred tax asset account. The reduction may not decrease the deferred tax liability account below zero. No other deferred liabilities may be reduced by the deferred tax asset account. The amendment is effective for taxable years beginning on or after January 1, 2007. Because the general business franchise tax imposed in G.S. 105-122 is for the tax year in which the tax becomes due, this amendment will impact the franchise tax reported on the 2006 income and franchise tax return since it is due on or after March 15, 2007.

(Effective for taxable years beginning on or after January 1, 2007; SB 1283, s. 1.1, S.L. 06-95.)

G.S. 105-122(d) – Technical and Stylistic Changes: This subsection was amended to delete an obsolete reference to intangible property in the appraised value franchise tax base and to make stylistic changes. The reference to the appraised value of intangible property became obsolete with the repeal of the intangibles tax effective for taxable years beginning on or after January 1, 1995.

(Effective July 24, 2006; HB 1963, s. 2, S.L. 06-162.)

G.S. 105-122.1 – Tax credit for LLCs Subject to Franchise Tax: When LLCs were first recognized as legal entities in this State, the annual report fee was set at $200 and was set at this higher amount in lieu of subjecting LLCs to the franchise tax. Pursuant to the amendment to G.S. 105-114 described above, LLCs that elect to be taxed as corporations for federal income tax purposes are now subject to the general business franchise tax. This section allows LLCs subject to franchise tax a tax credit equal to the difference between the annual report fee on LLCs and the annual report fee on corporations. The credit may not exceed the LLC's franchise tax liability for the year and any unused credit may not be carried forward. The amendment is effective for taxable years beginning on or after January 1, 2007. Because the general business franchise tax imposed in G.S. 105-122 is for the tax year in which the tax becomes due, this amendment will impact the franchise tax reported on the 2006 income and franchise tax return since it is due on or after March 15, 2007.

(Effective for taxable years beginning on or after January 1, 2007; SB 1741, s. 24A.2(c), S.L. 06-66.)

CORPORATION INCOME TAX

G.S. 105-130.2 – Definition of Gross Income Added; Conforming Change: The definition for "Income year" was recodified from subsection (4a) to subsection (4b). New subsection (4a) defines "Gross income" for corporate income tax purposes by cross-reference to section 61 of the Internal Revenue Code. This definition conforms to the Department's administrative practice.

(Effective July 24, 2006; HB 1963, s. 3(a), S.L. 06-162.)

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

(Effective for taxable years beginning on or after January 1, 2007; HB 1522, s. 1, S.L. 06-220.)

G.S. 105-130.7A – Royalty Reporting Option Expanded; Additional Exception to Addback Requirement: This section was enacted in 2001 to (1) provide a reporting option to recipients and payers of royalties on trademarks if the recipient and payer were related members and (2) to require the payer, with certain exceptions, to add to federal taxable income the amount of royalties deducted if the recipient did not include the income on a North Carolina income tax return.

As amended, this section was expanded to apply to royalty payments from copyrights and patents in addition to trademarks. Subsection (a) was rewritten to provide that the purpose of the statute applies to royalty payments received from the use of intangible property (formerly only trademarks). Subdivision (1a) was added to subsection (b) to

define “intangible property” as copyrights, patents, and trademarks. Conforming changes were made to subdivisions (2) and (8) of subsection (b). Subsection (c) was rewritten to add another exception to the requirement for the payer to add to federal taxable income the amount of royalties deducted. Subdivision (c)(3) allows the payer to forego the addback if the recipient related member is organized under the laws of another country, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the recipient at a rate that is equal to or exceeds the State’s corporate income tax rate.

(Expansion of royalty reporting option effective for taxable years beginning on or after January 1, 2006; SB 1741, s. 24A.3(a), S.L. 06-66; additional exception effective for taxable years beginning on or after January 1, 2006; HB 1891, s. 10, S.L. 06-196.)

G.S. 105-130.9(4) – Conforming Change: This subsection was amended to conform to the provisions of the new tax credit for recycling oyster shells. A taxpayer claiming the tax credit is not entitled to claim a contribution for the donation. The taxpayer is also not required to add the amount of the tax credit to taxable income under G.S. 105-130.5(a)(10).

(Effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011; SB 1741, s. 24.18(b), S.L. 06-66.)

G.S. 105-130.17(g) – Time for Filing Returns by Foreign Corporations Amended: This subsection was enacted to conform the filing date for certain foreign corporations to the date those corporations are required to file federal income tax returns. Under Code section 6072(c), foreign corporations, other than those having an office or place of business in the United States or a FSC or former FSC, are required to file their income tax returns by the fifteenth day of the sixth month instead of by the fifteenth day of the third month. Under prior law, foreign corporations were required to file their State income tax returns by the fifteenth day of the third month.

(Effective for taxable years beginning on or after January 1, 2006; HB 1892, s. 7, S.L. 06-18.)

G.S. 105-130.20 – Time for Reporting Federal Corrections Amended: Under prior law, a corporation whose federal taxable income was corrected or otherwise determined by the federal government had two years after being notified by the federal government of the corrections or determination to report the federal corrections or determination to the Department of Revenue. As amended, the period for reporting federal corrections or determinations has been reduced to six months.

(Effective July 1, 2006 for federal determinations made on or after that date; HB 1892, S. 4, S.L. 06-18.)

G.S. 105-130.46 – New Credit for Manufacturing Cigarettes for Exportation While Increasing Employment and Utilizing State Ports: Part 1 of Article 4 was amended to enact a new tax credit for manufacturing cigarettes for exportation. This credit is similar to the credit allowed under G.S. 105-130.45 in most respects. However, this credit differs from the credit in G.S. 105-130.45 in three major respects. First, to be eligible for this credit, a taxpayer must maintain an employment level in this State at the end of a taxable year that exceeds the taxpayer's employment level in this State at the end of the 2004 calendar year by at least 800 full-time jobs. Second, the maximum eligible credit for cigarettes exported during a taxable year is ten million dollars. Third, this credit may be claimed against either franchise tax or income tax.

Subsection (a) explains the purpose of this credit.

Subsection (b) provides definitions for employment level, exportation, full-time job, and successor in business. Employment level is defined as the total number of full-time jobs and part-time jobs converted into full-time equivalents. Exportation has the same meaning as in G.S. 105-130.45 prior to the change to subdivision (a)(2) described above. Therefore, a foreign country is a qualifying exportation destination but a possession of the United States and a commonwealth of the United States that is not a state are not. A full-time job is a 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. A successor in business has the same definition as in G.S. 105-130.45(a)(3) described above. A substantive change to this subsection was subsequently made to permit a job to be included in the employment level for a year only if the job is located in the State for more than six months during the year.

Subsection (c) addresses the employment level requirements to claim the credit. To first be eligible for a credit under this section, a taxpayer must have at least 800 more full-time jobs in this State at the end of the taxable year than the taxpayer had in this State on December 31, 2004. The taxpayer is eligible for full credits under this section in future years if the taxpayer maintains an employment level in this State at the end of the taxable year that exceeds the employment level in this State on December 31, 2004 by 800 or more employees. A successor in business's employment level is compared to the combined employment level of the successor and all of its predecessors. A job is located in this State if more than 50% of the employee's duties are performed in this State.

Subsection (d) provides three requirements to qualify for a credit under this section. Those three requirements are:

- the corporation satisfies the employment level requirements in subsection (b);
- the corporation is engaged in the business of manufacturing cigarettes for export; and
- the taxpayer exports cigarettes and other tobacco products through the North Carolina state ports during the taxable year.

A corporation that meets all three requirements is entitled to a credit equal to 40 cents per one thousand cigarettes exported. The maximum credit for cigarettes exported during the taxable year is ten million dollars.

Subsection (e) provides for a reduction in the credit in subsequent years if a taxpayer that has previously satisfied the employment level requirements in subsection (b) fails to satisfy the employment level requirements in the subsequent year. The reduced credit is calculated by multiplying the credit that would have been allowed if the employment level in this State had been maintained by a fraction. The numerator of the fraction is the number of full-time jobs by which the taxpayer's employment level in this State exceeds the employment level in this State in 2004 and the denominator of the fraction is 800. A technical change was subsequently made to this subsection to correct an erroneous cross-reference.

Subsection (f) provides for allocation of the credit against corporate income tax and franchise tax. At the time the taxpayer files the return on which the credit is claimed, the taxpayer elects the percentage of the credit to be applied against each of the two taxes. That election is binding for that year and for all carryforwards of that credit. The taxpayer can elect a different percentage for each year in which it qualifies for the credit.

Subsection (g) provides that the amount of credit that may be taken in a taxable year is limited to the lesser of ten million dollars or fifty percent of the amount of tax against which the credit is taken reduced by the sum of all other credits against the tax except tax payments made by or on behalf of the taxpayer. The limitation applies to the cumulative amount of credit allowed, including carryforwards of this credit or the credit claimed under G.S. 105-130.45 for previous years. A technical change was subsequently made to this subsection to correct an erroneous cross-reference.

Subsection (h) provides for a ten-year carryforward of any unused portion of this credit. The carryforward must be claimed against the tax against which the credit was originally claimed. A successor in business is entitled to claim carryforwards of credits originally claimed by predecessor corporations.

Subsection (i) requires a taxpayer that claims this credit to include with its tax return the following information:

- A statement of the exportation volume on which the credit is based.
- A list of the monthly export volumes reported to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the year in which the credit is claimed.
- Any other information required by the Department of Revenue.

Subsection (j) prohibits the taxpayer from claiming both this credit and the credit under G.S. 105-130.45 for the same activity.

Subsection (k) requires a corporation that takes this credit to file annual reports with the Senate and House Appropriations and Finance Committees and the Fiscal Research Division of the General Assembly by May 1 of each year. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit, including carryforwards, claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year. The first reports are due by May 1, 2006.

(Effective for taxable years beginning on or after January 1, 2006, and expires for exports occurring on or after January 1, 2018; HB 2, s. 6.1, S.L. 03-435 [second extra session]; subsequent substantive change to subsection (b) and technical changes to subsections (e) and (g) effective for taxable years beginning on or after January 1, 2006, and expires for exports occurring on or after January 1, 2018; SB 1145, s. 16(a), S.L. 04-170.)

G.S. 105-130.47(a) – Film Incentives Tax Credit Definitions Amended: Subdivisions (1), (2), and (4) of subsection (a) were amended to revise the definitions of "highly compensated individual," "live sporting event," and "qualifying expenses." The definition of "highly compensated individual" in subdivision (a)(1) was rewritten to apply to an individual who receives compensation in excess of $1,000,000 for personal services with respect to a single production, regardless of whether the individual receives the compensation directly from the production company or indirectly from a personal service company or an employee leasing company and regardless of whether the compensation is considered wages or nonemployee compensation. The definition of "live sporting event" in subdivision (a)(2) was amended to make stylistic changes. The definition of "qualifying expenses" in subdivision (a)(4) was rewritten to move the reference to "highly compensated individual from subparagraph b to the introductory language of the subdivision to conform with the change to the definition of "highly compensated individual" in subsection (a)(1) regarding compensation being either wages or nonemployee compensation. Subparagraph b of subdivision (a)(4) was also rewritten to clarify that the withholding of income tax from wages does not have to be done by the production company to conform with the change to the definition of "highly compensated individual" regarding the receipt of compensation directly from the production company or indirectly from a personal service company or an employee leasing company.

(Effective for taxable years beginning on or after January 1, 2006: HB 1963, s. 4(a), S.L. 06-162.)

G.S. 105-130.47(i) - Addition for Expenses Used to Calculate Credit for a Film or Television Production Repealed: This subsection, which provided that a taxpayer cannot claim both a tax credit under G.S. 105-130.47 and a deduction for the same expenses and required a taxpayer claiming a credit under this section to 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), was repealed.

(Effective for taxable years beginning on or after January 1, 2007; HB 1522, s. 2, S.L. 06-220.)

G.S. 105-130.48 – Tax Credit for Recycling Oyster Shells: This section was added to provide a tax credit to a taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources. The credit is $1.00 per bushel of oyster shells donated. The credit may not exceed the amount of tax against which it is claimed for the taxable year reduced by the sum of all other credits, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit can be carried forward for the succeeding five years. To support the credit, a taxpayer must obtain a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells that were donated.
A taxpayer who claims the credit must add back to taxable income any amount deducted under the Code for the donation of the oyster shells.

(Effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011; SB 1741, s. 24.18(a), S.L. 06-66.)

PIPED NATURAL GAS TAX

G.S. 105-187.43 – Time for Paying Piped Natural Gas Tax: Under prior law, a taxpayer subject to the piped natural gas tax paid the tax twice a month, on the 25th day of the current month and the 10th day of the next month.

As amended, the piped natural gas tax is payable monthly, on the 20th day of the month following the calendar month in which the liability for the tax accrues. In addition, if a taxpayer's piped natural gas tax liability is consistently at least $10,000 per month, the taxpayer must prepay the next month's tax liability at the same time that it is paying the current month's liability. The prepayment must equal at least 65% of any of the following:

- The amount of tax due for the current month.
- The amount of tax due for the same month in the preceding year.
- The average monthly amount of tax due in the preceding calendar year.

(Effective October 1, 2007; HB 1915, s. 13, S.L. 06-33.)

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 2006 calendar year. This charge is a percentage of gross premiums tax liability.

(Effective July 10, 2006; SB 1741, s. 26.2, S.L. 06-66.)

G.S. 105-228.5 - Clarification and Simplification of the Additional Gross Premiums Taxes on Fire and Lightning Coverage: Under prior law, the State imposed additional gross premiums taxes at the State (G.S. 105-228.5(d)(3)) and local (G.S. 105-228.5(d)(4)) levels on insurance carriers for policies that covered fire and lightning damage. For many years, the Department of Revenue (and previously the Department of Insurance) instructed taxpayers to calculate the tax on a taxable percentage of the premiums on different types of insurance contracts that included coverage for fire and lightning damage. Premiums for contracts providing auto and marine coverages were exempt from the additional Statewide tax but were taxable for the additional local tax. After consulting with the Department of Insurance and the Attorney General's Office, the Department of Revenue recently concluded that the law did not authorize the use of taxable percentages; instead, all premiums for contracts that included coverage for fire and lightning damage should have been subject to the tax. The Department notified the Legislature of its conclusion and asked for legislation to clarify how the Legislature intended for insurance companies to be taxed on fire and lightning coverage.

As a result, G.S. 105-228.5(d)(3) was changed twice. The first change, which is effective only for taxable years 2006 and 2007, statutorily adopted the taxable percentages used by the Department. Auto and marine coverages remain exempt from the additional Statewide tax and the additional Statewide tax rate remains at 1.33% for those two years.

Effective for taxable years beginning on or after January 1, 2008, G.S. 105-228.5(b)(2) and G.S. 105-228.5(d)(4), which defined and imposed an additional local fire and lightning tax, were repealed. G.S. 105-228.5(d)(3) was renamed to be an additional tax on property coverage contracts with no reference to fire and lightning coverage. The rate was reduced to 0.85%. The tax is imposed on 10% of the gross premiums from automobile physical damage policies, as defined in subparagraph (a), and 100% of the gross premiums from all other property coverage policies, as defined in subparagraph (b). Conforming changes were made to subsections (e) and (f) of G.S. 105-228.5 to reflect the repeal of the additional local fire and lightning tax.

(Amendment clarifying the taxable percentages effective for taxable years beginning on or after January 1, 2006; HB 1891, s. 1; repeal of additional local fire and lightning tax statutes effective for taxable years beginning on or after January 1, 2008; HB 1891, s. 2; amendments to G.S. 105-228.5(d)(3) imposing an additional tax on property coverage

contracts effective for taxable years beginning on or after January 1, 2008; HB 1891, s. 3; conforming changes effective for taxable years beginning on or after January 1, 2008; HB 1891, ss. 4 and 5, S.L. 06-196.)

TAX CREDITS

TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES

G.S. 105-129.2 – Conforming Change to Definitions: Former subsection (1), which defines air courier services, was recodified as subdivision (1a) and new subdivision (1) was added to define agrarian growth zone by reference to G.S. 105-129.3B.

(Effective for taxable years beginning on or after January 1, 2006 for business activities occurring on or after that date; SB 1741, s. 24.16(b), S.L. 06-66.)

G.S. 105-129.2A(a) – Sunset Moved Up: This subsection was amended to repeal Article 3A in general effective for business activities that occur on or after January 1, 2007. That date coincides with the effective date of the new Article 3I, which is intended to replace Article 3A. (Note: Subsections (a1) through (a4) provide exceptions to the general sunset of this Article.)

(Effective August 17, 2006; HB 2170, s. 1.3, S.L. 06-252.)

G.S. 105-129.2A(a2) – Extension of Deadline for a Taxpayer to Qualify as an Eligible Major Industry: This subsection provides an exception to the sunset of the Article 3A credits for a taxpayer that qualifies as an eligible major industry. In that case, the Article 3A credits expire for business activities that occur on or after January 1, 2010, instead of the general sunset date of January 1, 2007, found in G.S. 105-129.2A(a).

Under current law, the taxpayer had to qualify as an eligible major industry by January 1, 2006 to be entitled to the extended sunset. As amended, the taxpayer must qualify by January 1, 2008.

(Effective July 27, 2006; HB 2744, s. 2.1, S.L. 06-168.)

G.S. 105-129.2A(a4) – Sunset for Taxpayers That Sign a Letter of Commitment: This subsection was added to extend the sunset of Article 3A through December 31, 2007 if the taxpayer signs a letter of commitment with the Department of Commerce on or before December 31, 2006 stating the taxpayer's intent to create new jobs or make new investments with respect to machinery and equipment, central office or aircraft facility property, or substantial investment in other real property at a specific site in this State in 2007. If the taxpayer has a letter of commitment and conducts an activity that qualifies for one of the Article 3A credits, the taxpayer may not take any Article 3I credits

with respect to an establishment if the taxpayer claims Article 3A credits for activities at that establishment in 2007.

(Effective August 17, 2006; HB 2170, s. 1.3, S.L. 06-252.)

G.S. 105-129.3A(a) – Definition of Development Zone Expanded: This subdivision was amended to expand the definition of a development zone to include an area comprised of an economic development and training district as defined by G.S. 153A-317.12.

(Effective retroactively for taxable years beginning on or after January 1, 2004; SB 1741, s. 24.5(a), S.L. 06-66.)

G.S. 105-129.3B – Agrarian Growth Zone Designation: This new section was added to Article 3A to define an agrarian growth zone and to set out the procedure for designating an area of land as an agrarian growth zone. The purpose of these zones is to revitalize counties by making the enhancements to Article 3A tax credits that are available to development zones also available to agrarian growth zones.

Subsection (a) defines an agrarian growth zone as an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all of the following conditions. A county can have only one agrarian growth zone.

- All land within the zone is located wholly within a county that has no municipality with a population in excess of 10,000.
- Every census tract and census block group that is part of the zone has more than 20% of its population below the poverty level according to the most recent federal decennial census.
- The area of the zone less the smallest census tract included in the zone does not exceed 5% of the total area of the county in which the zone is located.

Subsection (b) authorizes the Secretary of Commerce to make a written determination of whether an area is an agrarian growth zone upon written request of a local government. A determination is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce will publish annually a list of all agrarian growth zones with a description of their boundaries. Subsection (c) defines when a parcel of property that is partially in an agrarian growth zone is considered to be entirely within the agrarian growth zone and, therefore, eligible for the Article 3A enhancements for agrarian growth zones. All of the following conditions must be satisfied for the parcel of property to be considered entirely within the agrarian growth zone:

- At least fifty percent of the parcel is located within the zone.
- The parcel was in existence and under common ownership prior to the most recent federal decennial census.

- The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

Subdivision (d) provides that an agrarian growth zone is considered an enterprise tier one area for purposes of the wage standard, the credit for investing in machinery and equipment, and the credit for worker training. For all other credits, an agrarian growth zone has the same tier designation as the county in which it is located.

(Effective for taxable years beginning on or after January 1, 2006 for business activities occurring on or after that date; SB 1741, s. 24.16(a), S.L. 06-66.)

G.S. 105-129.4(b) – Exception to the Definition of Location: This subsection was amended to provide an exception to the definition of location. To be eligible for most of the tax credits included in Article 3A, the taxpayer must meet a wage standard. To determine if the taxpayer meets the wage standard, the taxpayer must calculate the average wage it pays its employees at the location with respect to which the credit is claimed. Location means a specific establishment. The amendment makes an exception to the definition of location for purposes of the wage standard for a fiber, yarn, or thread mill that uses a sequential manufacturing process in which separate parts of the sequential manufacturing process are performed in different facilities within the same county. Under those parameters, a location may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

(Effective retroactively for taxable years beginning on or after January 1, 1996; SB 1741, s. 24.14(a), S.L. 06-66.)

G.S. 105-129.6(a1) – Conforming Change: This subsection was amended to make a conforming change to recognize the creation of agrarian growth zones in G.S. 105-129.3B.

(Effective for taxable years beginning on or after January 1, 2006 for business activities occurring on or after that date; SB 1741, s. 24.16(c), S.L. 06-66.)

G.S. 105-129.7(b)(1) – Conforming Change: This subdivision was amended to make a conforming change to recognize the creation of agrarian growth zones in G.S. 105-129.3B.

(Effective for taxable years beginning on or after January 1, 2006 for business activities occurring on or after that date; SB 1741, s. 24.16(d), S.L. 06-66.)

G.S. 105-129.8 – Conforming Change: Subsections (a), (a3) and (d) were amended to make a conforming change to recognize the creation of agrarian growth zones in G.S. 105-129.3B.

(Effective for taxable years beginning on or after January 1, 2006 for business activities occurring on or after that date; SB 1741, s. 24.16(e), S.L. 06-66.)

G.S. 105-129.9 – Conforming Change: Subsections (d) and (e) were amended to make a conforming change to recognize the creation of agrarian growth zones in G.S. 105-129.3B.

(Effective for taxable years beginning on or after January 1, 2006 for business activities occurring on or after that date; SB 1741, s. 24.16(f), S.L. 06-66.)

G.S. 105-129.10 – Sunset: This section was rewritten to cause the credits for research and development in Article 3A sunset effective for taxable years beginning on or after January 1, 2006.

(Sunset effective for taxable years beginning on or after January 1, 2006; HB 1414, s. 32D.4, S.L. 04-124.)

BUSINESS AND ENERGY TAX CREDITS

G.S. 105-129.15 – Definition of Renewable Biomass Resources and Renewable Energy Property Expanded: There were two changes to this section. The first change amended subdivision (6) to expand the definition of renewable biomass resources by identifying spent pulping liquor as an example of organic matter produced by terrestrial and aquatic plants and animals.

The second change to this section 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.

(Effective for taxable years beginning on or after January 1, 2006; SB 1149, s. 4, S.L. 05-413.)

G.S. 105-129.15 – Technical Change: The introductory language of section 4 of S.L. 2005-413, which erroneously referred to G.S. 105-129.15(6) and (7) as just G.S. 105-129.15(7), was corrected.

(Effective July 24, 2006; HB 1963, s. 23, S.L. 06-162.)

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. 105-129.16D – Addition of Alternative Production Credit; Conforming Changes; Sunset Extended; Extended Carryover: This section was amended by adding a new subsection (b1) to provide an alternative production credit in lieu of the production credit in subsection (b), to make conforming changes in subsection (c), and to extend the sunset in subsection (d). Subsection (b1) was subsequently amended to extend the carryover period for the alternative production credit.

Subsection (b1) provides an alternative production credit to a taxpayer that invests at least $400,000,000 to construct and place in service in this State three or more commercial facilities for processing renewable fuel. The allowable credit is 35% of the cost to the taxpayer of constructing and equipping the facilities. To claim the credit, the taxpayer must obtain a written determination from the Department of Commerce that the taxpayer is expected to invest at least $400,000,000 in three facilities within a five-year period. The tax credit is taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. A taxpayer forfeits remaining installments of a credit if a facility is disposed of or taken out of service and the investment requirements of this subsection are no longer met but may continue to take any unused portion of previous installments. If the taxpayer forfeits the tax credit under this subsection, the taxpayer is prohibited from taking the credit under subsection (b) with respect to the same property. This subsection also provides an exception to the rule in G.S. 105-129.17 that the credits in Article 3B can be claimed against either income tax or franchise tax. The alternative production credit may be claimed only against income tax. This subsection was subsequently amended to provide that a taxpayer might carry forward any unused installments of the credit for the succeeding ten years. The general rule in G.S. 105-129.17 is that unused installments of Article 3B can be carried forward for five years.

Subsection (c) was rewritten to make conforming changes because of the new credit in subdivision (b1).

Subsection (d) was rewritten to extend the sunset of the credits in G.S. 105-129.16D from January 1, 2008 to January 1, 2011.

(New credit, conforming changes, and extension of sunset effective for taxable years beginning on or after January 1, 2006; SB 1741, s. 24.7(a), S.L. 06-66; extension of carryover effective for taxable years beginning on or after January 1, 2006; SB 1523, s. 19.5(a), S.L. 06-259.)

G.S. 105-129.16E – Credit for Small Business Employee Health Insurance: This section was added to Article 3B to provide a tax credit to a small business that provides health insurance for all of its eligible employees during the taxable year.

Subsection (a) provides that a taxpayer provides health benefits if it pays at least 50% of the premiums for health care coverage 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 or if its employees have qualifying existing coverage. The credit is limited to insurance paid for an eligible employee whose total wages or salary from the business does not exceed $40,000 on an annual basis. The amount of credit per employee is the lesser of $250 or the taxpayer's actual cost of providing health benefits for the taxable year.

Subsection (b) requires nonresident or part-year resident individuals and multistate corporations to reduce the credit calculated under subsection (a). An individual determines his credit by multiplying the calculated credit in subsection (a) by the percentage of total income subject to North Carolina tax determined pursuant to G.S. 105-134.5(b) or (c). A corporation determines its credit by multiplying the calculated credit in subsection (a) by the apportionment of apportionable income percentage determined pursuant to G.S. 105-130.4.

Subsection (c) provides definitions for "eligible employee," "qualifying existing coverage," and "small business." "Eligible employee" is defined by cross-reference to G.S. 58-50-110. "Qualifying existing coverage" is defined by cross-reference to G.S. 58-50-130(a)(4a). "Small business" is defined as a taxpayer that employs no more than 25 eligible employees throughout the taxable year.

Subsection (d) provides that the credit expires for taxable years beginning on or after January 1, 2009.

(Effective for taxable years beginning on or after January 1, 2007; SB 1741, s. 24.4(a), S.L. 06-66.)

G.S. 105-129.16F – New Tax Credit for Biodiesel Producers: This section was added to Article 3B to provide a tax credit to biodiesel providers that produce at least 100,000 gallons of biodiesel during the taxable year. The credit is equal to the per gallon excise tax the producer paid on the biodiesel under Article 36C of Chapter 105. "Biodiesel" is defined for purposes of this section as "liquid fuel derived in whole from agricultural products, animal fats, or wastes from agricultural products or animal fats." The credit does not apply to tax paid on diesel fuel included in a biodiesel blend. The maximum annual credit is $500,000. The credit expires for taxable years beginning on or after January 1, 2010.

(Effective for taxable years beginning on or after January 1, 2008; SB 1741, s. 24.8(a), S.L. 06-66.)

HISTORIC REHABILITATION TAX CREDITS

G.S. 105-129.35(a) – Credit for Rehabilitating an Income-producing Historic Structure Expanded: Under current law, the tax credit for rehabilitating an income-producing historic structure is equal to 20% of qualifying expenditures. As amended, the tax credit is 40% of qualifying expenditures if the certified historic structure is a facility that at one time served as a State training school for juvenile offenders.

(Effective for taxable years beginning on or after January 1, 2006 for eligible sites placed into service on or after July 1, 2006; HB 474, s. 2, S.L. 06-40.)

G.S. 105-129.36(a) – Credit for Rehabilitating a Nonincome-producing Historic Structure Expanded: Under current law, the tax credit for rehabilitating a nonincome-producing historic structure is equal to 30% of qualifying expenditures. As amended, the tax credit is 40% of qualifying expenditures if the certified historic structure is a facility that at one time served as a State training school for juvenile offenders.

(Effective for taxable years beginning on or after January 1, 2006 for eligible sites placed into service on or after July 1, 2006; HB 474, s. 3, S.L. 06-40.)

G.S. 105-129.36(b)(1) – Definition of Certified Rehabilitation for Nonincome-producing Historic Structure Amended: Under current law, repairs and alterations had to be certified by the State Historic Preservation Officer prior to commencement of the work to qualify as certified rehabilitation for purposes of the tax credit for rehabilitating nonincome-producing historic property. As amended, the rehabilitation is no longer required to be certified prior to the commencement of the work.

(Effective for taxable years beginning on or after January 1, 2006 for eligible sites placed into service on or after July 1, 2006; HB 474, s. 4, S.L. 06-40.)

RESEARCH AND DEVELOPMENT TAX CREDITS

G.S. 105-129.51(a) – Conforming Change - This subsection was amended to conform with the enactment of Article 3I, which replaces Article 3A.

(Effective January 1, 2007; HB 2170, s. 2.20, S.L. 06-252.)

G.S. 105-129.55(a) – Conforming Change: This subsection was amended to conform with the enactment of Article 3I, which separates the State's counties into development tiers instead of enterprise tiers.

(Effective January 1, 2007; HB 2170, s. 2.1, S.L. 06-252.)

MILL REHABILITATION TAX CREDIT

New Article 3H – Tax Credit for Mill Rehabilitation: This new Article was enacted to provide a tax credit for revitalization of historic mill facilities. The Article consists of sections G.S. 105-129.70 through G.S. 105-129.75.

G.S. 105-129.70 – Definitions: This section sets out the definitions that apply to Article 3H. Definitions are provided for the terms "Certified historic structure," "Certified rehabilitation," "Cost certification," "Eligibility certification," "Eligible site," "Enterprise tier area," "Pass-through entity," "Qualified rehabilitation expenditures," "Rehabilitation expenses," "State-certified historic structure," and "State Historic Preservation Officer."

Subdivision (1) defines "Certified historic structure" by cross-reference to the definition of that term in section 47 of the Internal Revenue Code.

Subdivision (2) defines "Certified rehabilitation" by cross-reference to the definition of that term in G.S. 105-129.36.

Subdivision (3) defines "Cost certification" as the certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

Subdivision (4) defines "Eligibility certification" as the certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

Subdivision (5) defines "Eligible site" as a site located in this State that satisfies all of the following conditions:

- It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.
- It is a certified historic structure or a State-certified historic structure.
- It has been at least 80% vacant for a period of at least two years immediately preceding the date the eligibility certification is made.
- The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed $3,000,000 for the site as a whole.

Subdivision (6) defines "Enterprise tier area" by cross-reference to the definition of that term in G.S. 105-129.3.

Subdivision (7) defines "Pass-through entity" by cross-reference to the definition of that term in G.S. 105-228.90.

Subdivision (8) defines “Qualified rehabilitation expenditures” by cross-reference to the definition of that term in section 47 of the Internal Revenue Code.

Subdivision (9) defines “Rehabilitation expenses” by cross-reference to the definition of that term in G.S. 105-129.36.

Subdivision (10) defines “State-certified historic structure” by cross-reference to the definition of that term in G.S. 105-129.36.

Subdivision (11) defines “State Historic Preservation Officer” by cross-reference to the definition of that term in G.S. 105-129.36.

Subdivision (3a) defining “development tier area by cross-reference to the meaning of that term as defined in G.S. 143B-437.08 was subsequently added and subdivision (6) was subsequently repealed to conform to the new Article 3I.

G.S. 105-129.71 – Credit for income-producing rehabilitated mill property:
Subsection (a) provides that a taxpayer who is allowed a federal income tax credit under Code section 47 for making qualified rehabilitation expenditures with respect to an eligible site is allowed a State tax credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year the eligible site is placed in service. If the eligible site is placed in service in phases in different years, the credit may be claimed for each year based on the qualified expenditures associated with the phase placed in service during that year. To be eligible for the credit, the taxpayer must provide a copy of the eligibility certification and the cost certification. If the eligible site is located in a tier one, two, or three area on the date of certification, the amount of credit is 40% of the expenditures; if the eligible site is in a tier four or five county, the amount of credit is 30%.

Subsection (a) was subsequently amended to conform to the new Article 3I.

Subsection (b) allows a pass-through entity that qualifies for the credit to allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity at the end of the taxable year in which the eligible site is placed in service is at least 40% of the amount of credit allocated to that owner. This differs from the allocation principles in G.S. 105-131.8 and G.S. 105-269.15 that apply to other tax credits. Under the general allocation provisions, tax credits are allocated among S corporation shareholders in accordance with their pro rata share of the corporation, which is determined on the basis of stock ownership, and tax credits are allocated among partners in a partnership in accordance with the partnership agreement. The allocation made by the partnership must have a substantial economic effect, which means that the allocation agreement must reflect the economic interests of the partners in the partnership and cannot be based solely on tax consequences. A statement of the allocation made under the special provision for this credit and the allocation that would have been required if this provision were not law must be included with the tax returns

filed by the pass-through entity and the owners for each year in which the allocated credit is claimed.

Subsection (c) requires an owner of a pass-through entity to forfeit a portion of the credit for rehabilitating income-producing mill property if the owner disposes of more than one-third of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service. The forfeiture amount is determined by multiplying the amount of the credit by the percentage reduction in ownership and then multiplying that product by the federal recapture percentage found in Code section 50(a)(1)(B).

Subsection (d) provides two exceptions to the forfeiture provisions in subsection (c). Forfeiture is not required if the change in ownership is the result of either (1) the death of the owner, or (2) a merger, consolidation, or similar transaction requiring approval by the shareholders, partners or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

Subsection (e) provides that an owner of a pass-through entity that forfeits a credit pursuant to subsection (c) is liable for all past taxes avoided as the result of claiming the credit, plus interest at the rate established under G.S. 105-241.1(i) computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. If the taxes and interest are not paid by the due date, the taxpayer is subject to the penalties provided in G.S. 105-236.

G.S. 105-129.72 - Credit for nonincome-producing rehabilitated mill property:
Subsection (a) provides that a taxpayer who is not allowed a federal income tax credit under Code section 47 and who makes qualified rehabilitation expenses with respect to an eligible site is allowed a State tax credit equal to a percentage of the rehabilitation expenses. The credit may be claimed in five equal installments beginning in the year the eligible site is placed in service. If the eligible site is placed in service in phases in different years, the credit may be claimed for each year based on the qualified expenses associated with the phase placed in service during that year. To be eligible for the credit, the taxpayer must provide a copy of the eligibility certification and the cost certification. If the eligible site is located in a tier one, two, or three area on the date of certification, the amount of credit is 40% of the expenditures; no credit is allowed if the eligible site is in a tier four or five county.

Subsection (a) was subsequently amended to conform to the new Article 3I.

Subsection (b) allows a pass-through entity that qualifies for the credit to allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity at the end of the taxable year in which the eligible site is placed in service is at least 40% of the amount of credit allocated to that owner. This differs from the allocation principles in G.S. 105-131.8 and G.S. 105-269.15 that apply to other tax credits. Under the general allocation provisions, tax credits are allocated among S

corporation shareholders in accordance with their pro rata share of the corporation, which is determined on the basis of stock ownership, and tax credits are allocated among partners in a partnership in accordance with the partnership agreement. The allocation made by the partnership must have a substantial economic effect, which means that the allocation agreement must reflect the economic interests of the partners in the partnership and cannot be based solely on tax consequences. A statement of the allocation made under the special provision for this credit and the allocation that would have been required if this provision were not law must be included with the tax returns filed by the pass-through entity and the owners for each year in which the allocated credit is claimed.

Subsection (c) requires an owner of a pass-through entity to forfeit a portion of the credit for rehabilitating nonincome-producing mill property if the owner disposes of more than one-third of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service. The forfeiture amount is determined by multiplying the amount of the credit by the percentage reduction in ownership and then multiplying that product by the federal recapture percentage found in Code section 50(a)(1)(B). The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

Subsection (d) provides two exceptions to the forfeiture provisions in subsection (c). Forfeiture is not required if the change in ownership is the result of either (1) the death of the owner, or (2) a merger, consolidation, or similar transaction requiring approval by the shareholders, partners or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

Subsection (e) provides that an owner of a pass-through entity that forfeits a credit pursuant to subsection (c) is liable for all past taxes avoided as the result of claiming the credit, plus interest at the rate established under G.S. 105-241.1(i) computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. If the taxes and interest are not paid by the due date, the taxpayer is subject to the penalties provided in G.S. 105-236.

G. S. 105-129.73 – Tax credited; cap: Subsection (a) provides that the tax credits allowed in Article 3H may be claimed against one of the following taxes: (1) franchise tax, (2) income tax, or (3) gross premiums tax. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which it is claimed. The election is binding, including both installments and carryforwards of unused credits.

Subsection (b) provides that a credit claimed under Article 3H may not exceed the amount of tax against which it is claimed for the taxable year reduced by the sum of all other credits, except payment of tax made by or on behalf of the taxpayer. Any unused credit may be carried forward for the succeeding nine years.

G.S. 105-129.74 – Coordination with Article 3D: This section includes two provisions to coordinate with the tax credits for rehabilitating historic structures under Article 3D. First, a taxpayer claiming a credit under Article 3H cannot also claim a credit under Article 3D with respect to the same activity. Second, the authority given to the North Carolina Historical Commission in Article 3D to establish rules and fees also applies to this Article.

G.S. 105-129.75 – Sunset: Article 3H expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011.

(With the exception of the addition of G.S. 105-129.70(3a), the repeal of G.S. 105-129.70(6), and the conforming changes to G.S. 105-129.71(a) and G.S. 105-129.72(a), these provisions are effective for taxable years beginning on or after January 1, 2006 for eligible sites placed into service on or after July 1, 2006; HB 474, s. 1, S.L. 06-40; the addition of G.S. 105-129.70(3a) and the repeal of G.S. 105-129.70(6) are effective January 1, 2007; HB 2170, s. 2.22, S.L. 06-252; conforming changes to G.S. 105-129.71(a) and G.S. 105-129.72(a) effective January 1, 2007; HB 2170, ss. 2.23 and 2.24, respectively, S.L. 06-252.)

TAX CREDITS FOR GROWING BUSINESSES

New Article 3I – Tax Credits for Growing Businesses: This new Article was enacted to replace the tax credits generally available under Article 3A of Chapter 105 with more narrowly focused credits for job creation and business investment. The Article consists of sections G.S. 105-129.80 through G.S. 105-129.89. The Article is effective for taxable years beginning on or after January 1, 2007.

G.S. 105-129.80 – Legislative Findings: This subsection sets out the legislative findings for why the tax credits in this Article are warranted.

G.S. 105-129.81 – Definitions: This section sets out the definitions that apply to Article 3I.

Subdivision (1) defines “agrarian growth zone” by cross-reference to the definition of that term in G.S. 143B-437.10.

Subdivision (2) defines “aircraft maintenance and repair” as “the provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.”

Subdivision (3) defines “air courier services” as “the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.”

Subdivision (4) defines “business property” as “tangible personal property that is used in a business and capitalized under the Code.”

Subdivision (5) defines “company headquarters” as “a corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.”

Subdivision (6) defines “cost.” For property owned by the taxpayer, cost is determined pursuant to regulations adopted under Code section 1012. For property that the taxpayer leases from others, cost is the value as determined pursuant to G.S. 105-130.4(j)(2).

Subdivision (7) defines “customer service call center” as “the provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.”

Subdivision (8) defines “development tier” as “the classification assigned to an area pursuant to G.S. 143B-437.08.”

Subdivision (9) defines “electronic shopping and mail order houses” as “an industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.”

Subdivision (10) defines “establishment” by cross-reference to the definition of that term in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.
Subdivision (11) defines “full-time job” as “a 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. A full-time employee is an employee who holds a full-time job.”

Subdivision (12) defines “hub” by cross-reference to the definition of that term in G.S. 105-164.3.

Subdivision (13) defines “information technology and services” as “an industry in one of the following:

- Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.
- Software publishers industry group 5112 as defined by NAICS.
- Computer systems design and related services industry group 5415 as defied by NAICS.”

Subdivision (14) defines “long-term unemployed worker” as “an individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.”

Subdivision (15) defines “manufacturing” as “an industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.”

Subdivision (16) defines “motorsports facility” as “a motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.”

Subdivision (17) defines “motorsports racing team” as “a professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.”

Subdivision (18) defines “NAICS” as “the North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.”

Subdivision (19) defines “new job” as “a full-time job that represents a net increase in the number of the taxpayer’s employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.”

Subdivision (20) defines “overdue tax debt” by cross-reference to the term as defined in G.S. 105-243.1.”

Subdivision (21) defines “purchase” by cross-reference to the term as defined in Code section 179.

Subdivision (22) defines “related member” by cross-reference to the term as defined in G.S. 105-130.7A.

Subdivision (23) defines “research and development” as “an industry in scientific research and development services industry group 5417 as defined by NAICS.”

Subdivision (24) defines “urban progress zone” as “the classification assigned to an area pursuant to G.S. 143B-437.09.”

Subdivision (25) defines “warehousing” as “an industry in warehousing and storage subsector 493 as defied by NAICS.”

Subdivision (26) defines “wholesale trade” as “an industry in wholesale trade sector 42 as defined by NAICS.”

G.S. 105-129.82 – Sunset; studies: Subsection (a) of this section provides that this Article is repealed effective for business activities that occur on or after January 1, 2011. Subsections (b), (c), and (d) require the Department of Commerce to study the effect of this Article’s tax credits on tax equity and the effectiveness of the credits and to report

the results and any recommendations to the General Assembly biennially beginning June 1, 2009.

G.S. 105-129.83 – Eligibility; forfeiture: Subsection (a) of this section provides that a taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is one of the twelve listed below. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered. The twelve primary activities are:

- aircraft maintenance and repair.
- air courier services hub.
- company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
- customer service call centers.
- electronic shopping and mail order houses.
- information technology and services.
- manufacturing.
- motorsports facility.
- motorsports racing team.
- research and development.
- warehousing.
- wholesale trade.

Subsection (b) provides additional eligibility requirements for company headquarters. The taxpayer must create at least 75 new jobs at the company headquarters within a 24-month period. Meeting the job creation requirement makes the taxpayer eligible for credits with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. After the three-year eligibility period expires, the taxpayer can qualify for a new three-year eligibility period by creating an additional 75 new jobs within a 24-month period. Creating an additional 75 jobs during a three-year eligibility period does not extend the eligibility period.

Subsection (c) requires a taxpayer to meet a wage standard to be eligible for credits in a development tier two or three area. If the activity occurs in a tier one area, the taxpayer does not have to meet a wage standard.

Jobs that are in tier two or three areas that are also within an urban progress zone or an agrarian growth zone must pay an average weekly wage that is at least equal to 90% of the lesser of the average wage for all private employers in the State and the average wage for all private employers in the county. Jobs that are in tier two or three areas and are not within an urban progress zone or an agrarian growth zone must pay an average weekly wage that is at least equal to the lesser of 110% of the average wage for all private employers in the State and 90% of the average wage for all private employers in the county. The Department of Commerce will publish the wage standard for each county on an annual basis.

In making the wage calculation, the taxpayer must include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs were not filled at the time the taxpayer claims the credit. Only full-time jobs are included in the calculation. A taxpayer with a taxable year other than a calendar year must use the wage standard for the calendar year in which the taxable year begins.

Subsection (d) requires a taxpayer to provide health insurance for all of the full-time jobs at the establishment with respect to which a credit is claimed when the taxpayer engages in the activity that qualifies for the credit and for each subsequent year in which an installment or carryforward of a credit is claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installments or carryforwards of the credit. A taxpayer provides health insurance if it pays at least 50% of the premiums for health care coverage 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.

Subsection (e) requires a taxpayer to have a good environmental record. Having a good environmental record means that, at the time the taxpayer claims a credit, there is no pending administrative, civil, or criminal enforcement action against the taxpayer based on alleged significant violations of an environmental program administered by the Department of Environment and Natural Resources and there has been no final determination of the taxpayer's responsibility for one of these violations within the last five years.

Subsection (f) requires a taxpayer to have a good OSHA record. Having a good OSHA record means that, at the time the taxpayer claims a credit, there are no citations against the taxpayer under the Occupational Safety and Health Act at the establishment for which the credit is claimed that have become final orders within the past three years for willful serious violations or for failing to abate serious violations.

Subsection (g) provides that a taxpayer is ineligible for an Article 3I tax credit if the taxpayer has an overdue tax debt at the time the taxpayer claims an installment or carryforward of a credit.

Subsection (h) provides for expiration of the credits allowed under this Article if, during the period that installments of a credit accrue, the taxpayer is no longer engaged in an eligible business at the establishment or if the number of jobs of an eligible company headquarters falls below the minimum number required in subsection (b). If credits expire, the taxpayer may not take any future installments of the credits but may continue to claim any unused installments of the credits carried forward from earlier years. A change in the development tier designation of the location of an establishment does not result in expiration of credits.

Subsection (i) provides for forfeiture of the credits allowed under this Article if the taxpayer was not eligible for the credits for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer forfeits the credit for investment in real property (G.S. 105-129.89) if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment. A taxpayer that forfeits a credit is liable for all past taxes avoided as the result of claiming the credit, plus interest at the rate established under G.S. 105-241.1(i) computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. If the taxes and interest are not paid by the due date, the taxpayer is subject to the penalties provided in G.S. 105-236.

Subsection (j) addresses change in ownership of a business. For purposes of this subsection, the term "business" means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition or bankruptcy of a business or any transaction by which a business reformulates itself as another business does not create new eligibility with respect to credits for which the predecessor was not eligible. The successor business can take any credit or carried-over portion of a credit that its predecessor could have taken if the predecessor had a tax liability.

The acquisition of a business is a new investment that creates new eligibility for credits if (1) the business closed before it was acquired; (2) the business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act before it was acquired; or (3) the business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction.

Subsection (k) provides that a taxpayer can request in writing from the Department of Revenue specific advice regarding eligibility for a credit under this Article. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee regarding eligibility for a credit.

Subsection (l) authorizes a taxpayer to sign a letter of commitment with the Department of Commerce to undertake specific activities at a specific site within the next two years. The letter of commitment must be signed after the Department of Commerce calculates the development tier designations for the next year but before the beginning of the year. If the taxpayer engages in activities within the next two years as provided in the letter of commitment, the taxpayer can calculate its credits based on the establishment's development tier designation and urban progress zone or agrarian growth zone designation in the year in which the letter of commitment was signed. If the taxpayer does not meet the terms of the letter of commitment, it may still qualify for credits but must use the development tier designation and urban progress zone or agrarian growth zone designation in effect at the time the taxpayer engages in the activity.

G.S. 105-129.84 – Tax Election; Cap; Carryforwards; Limitations: Subsection (a) provides that the tax credits in this Article may be claimed against the franchise tax, the

corporate or individual income tax, and the gross premiums tax. The taxpayer may divide a credit among those taxes. Carryforwards of a credit may also be divided among those taxes without regard to which taxes the credit was claimed against in earlier years.

Subsection (b) provides that the credits may not exceed 50% of the cumulative amount of taxes against which they may be claimed, reduced by the sum of all other tax credits allowed against those taxes. This limitation applies to the cumulative amount of credit, including carryforwards.

Subsection (c) provides that, as a general rule, the unused portion of the credit for creating jobs or the credit for investing in business property may be carried forward for five years and the unused portion of the credit for investing in real property may be carried forward for fifteen years. A twenty-year carryforward applies if the taxpayer obtains a written determination from the Department of Commerce that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least $150,000,000 worth of business and real property. If the taxpayer does not make the required level of investment, the carryforward period is reduced from twenty to five years.

Subsection (d) establishes a special statute of limitations for claming tax credits under this Article. A taxpayer must claim a credit within six months after the date set by statute for the filing of the return that coincides with the year that the taxpayer qualified for the credit, including any extensions of that date.

G.S. 105-129.85 – Fees and Reports: Subsection (a) imposes a fee of $500.00 for each type of credit the taxpayer intends to claim with respect to an establishment. There is no fee for a credit in an enterprise tier one or tier two area. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in an activity for which the taxpayer is eligible for a credit. No credit will be allowed for a taxable year until all outstanding fees have been paid.

Subsection (b) requires the Department of Revenue to publish a report by May 1 of each year providing the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

- The number and amount of credits generated and taken for each credit allowed in this Article.
- The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.
- The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.
- The cost and development tier area of real property with respect to which credits were generated and to which credits were taken.

G.S. 105-129.86 – Substantiation: Subsection (a) requires a taxpayer claiming a tax credit under Article 3I 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.

Subsection (b) requires a taxpayer claiming a tax credit under Article 3I to provide, in a form prescribed by the Department of Revenue, certain qualifying information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards under affirmation with the tax return.

G.S. 105-129.87 – Credit for Creating Jobs: Subsection (a) provides a tax credit for creating jobs to a taxpayer that meets the eligibility requirements in G.S. 105-129.83 and satisfies the threshold requirements for new jobs in subsection (b). The amount of credit for each new job is $12,500 if the job is in a development tier one county; $5,000 if the job is in a development tier two county; and $750 if the job is in a development tier three county. The amount of credit is increased by $1,000 if the job is located in an urban progress zone or an agrarian growth zone. The amount of credit is increased by an additional $2,000 if a job located in an urban progress zone or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker.

Subsection (b) sets out the threshold requirements for new job creation that a taxpayer must meet to be eligible for the credit. A taxpayer must create at least 5 new jobs if the establishment is in a development tier one county; 10 new jobs if the establishment is in a development tier two county; and 15 new jobs if the establishment is in a development tier three county. If the new job is located in an urban progress zone or an agrarian growth zone, then the development tier one threshold applies. If a taxpayer creates new jobs at more than one establishment in the same county during the year, the threshold applies to the aggregate number of jobs created. If a taxpayer creates new jobs at eligible establishments in more than one county during the year, the threshold applies separately to the aggregate number of jobs created in each county.

Subsection (c) provides that a job is considered located in a county, an urban progress zone or an agrarian growth zone if more than 50% of the employee's duties are performed in the county or the zone. The taxpayer determines the number of new jobs created during the taxable year by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in the State during the taxable year.

Subsection (d) provides that the credit may be taken in four equal installments beginning in the tax year following the year in which the new jobs were created. If a job is no longer filled during any of the four installment years, the credit related to that job expires and the taxpayer may not take any remaining installments of the credit with respect to that job. If, in one of the installment years, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold in subsection (b) and the number of full-time employees the taxpayer had in the year before the year in which the

taxpayer qualified for the credit, the credits with respect to all of the new jobs expire and the taxpayer may not take any remaining installments of the credits. The taxpayer may continue to claim any unused portions of previous installments of the credit that are carried forward under G.S. 105-129.84.

Subsection (e) addresses transferred jobs. Jobs that are transferred by the taxpayer from one area of the State to another area or are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs. If in one of the four installment years a job for which a credit is claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If the job is moved to a lower-numbered development tier or into an urban progress zone or an agrarian growth zone, the remaining installments are calculated as if the job was initially created in the area to which it was moved.

Subsection (f) provides that, for purposes of the new jobs credit, the taxpayer satisfies the wage standard requirement only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

Subsection (g) prohibits a taxpayer from claiming a credit under this section with respect to jobs for which the taxpayer claimed a credit under G.S. 105-129.8.

G.S. 105-129.88 – Credit for Investing in Business Property: Subsection (a) provides a tax credit for investing in business property to a taxpayer that meets the eligibility requirements in G.S. 105-129.83, purchases or leases business property and places it in service in this State during the taxable year, and satisfies the threshold requirements in subsection (c). Business property is eligible if it is not leased to another. The amount of credit is equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. The applicable percentage is 7% in a development tier one county, 5% in a development tier two county, and 3.5% in a development tier three county. If the business property is placed in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the same as for a development tier one area. The credit may be taken in four equal installments beginning in the tax year following the year in which the business property is placed in service.

Subsection (b) defines “eligible investment amount” as the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer’s eligible business property that is in service in the State on the last day of the taxable year exceeds the cost of all of the taxpayer’s eligible business property that was in service in the State on the last day of the base year. The base year is that year of the preceding three taxable years in which the taxpayer had the most eligible business property in service in the State.

Subsection (c) provides that the applicable threshold is $0 if the eligible business property is placed in service in a development tier one county; $1,000,000 if the business property is placed in service is in a development tier two county; and $2,000,000 if the business property is placed in service in a development tier three county. If the business property is placed in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the same as for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in the same county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service at all establishments in the county. If a taxpayer places eligible business property in service at eligible establishments in more than one county during the year, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If a taxpayer places eligible business property in service at an eligible establishment over a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the preceding year.

Subsection (d) provides for expiration of the credit if, in one of the four installment years, the business property with respect to which the credit is claimed is disposed of. The term "disposed of" means disposed of, taken out of service, or moved out of State. In that case, the taxpayer may not take any remaining installments of the credit for that business property unless the cost of the disposed business property is offset in the same taxable year by new investment in eligible business property placed in service in the same county. Business property is considered offset if there has been a net reduction in the cost of all of the taxpayer's eligible business property in that county of 20% or less. The taxpayer does not include the cost of business property placed in service during the taxable year for which the taxpayer claims an Article 3A or Article 3B tax credit in the cost of all eligible business property in the county for purposes of determining the net reduction. The taxpayer may continue to claim any unused portions of previous installments of the credit that are carried forward under G.S. 105-129.84.

Subsection (e) addresses transferred property. If, in one of the four installment years, business property with respect to which a credit is claimed is moved to an county in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments are allowed only to the extent they would have been allowed if the property was initially placed in service in the area to which it was moved. If the business property is moved to a lower-numbered development tier or into an urban progress zone or an agrarian growth zone, the remaining installments are calculated as if the property was initially placed in service in the area to which it was moved. Note: The law regarding moving property to a higher-numbered development tier refers to moving property to an urban progress zone or an agrarian growth zone instead of out of a zone. The Department will ask that the technical error be corrected during the 2007 legislative session.

Subsection (f) provides that, for purposes of the investment in business property credit, the taxpayer satisfies the wage standard requirement only if the taxpayer satisfies the

requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

Subsection (g) prohibits a taxpayer from claiming a credit under this section with respect to business property for which the taxpayer claimed a credit under G.S. 105-129.9 or G.S. 105-129.9A.

G.S. 105-129.89 – Credit for Investing in Real Property: Subsection (a) provides a tax credit for investing in real property to a taxpayer that meets the eligibility requirements in G.S. 105-129.83 and in subsection (b) of this section, purchases or leases real property in a development tier one area, and begins to use the property in an eligible business during the tax year. The allowable credit is equal to 30% of the eligible investment amount. Property is located in a development tier one area if the property was located in a development tier one area at the time the taxpayer applied to the Department of Commerce for a determination as required under subsection (b). The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property that the taxpayer is using in an eligible business in the State on the last day of the taxable year exceeds the cost of all of the taxpayer's real property that was in use in an eligible business in the State on the last day of the base year. The base year is that year of the preceding three taxable years in which the taxpayer was using the most real property in an eligible business in the State. In the case of leased property, the cost of the property is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor.

The credit may be taken in seven equal installments beginning in the tax year following the year in which the real property is first used in an eligible business. When only a part of the property is first used in an eligible business in one year and another part is first used in a later year, the taxpayer is entitled to separate credits for the amounts used in each year.

The basis in any real property for which a credit is allowed under this section is reduced by the amount of allowable credit.

Subsection (b) provides that a taxpayer is eligible for the credit for investing in real property with respect to an establishment only if the taxpayer obtains a written determination from the Department of Commerce that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least $10,000,000 of real property and that the establishment will create at least 200 new jobs within 2 years of the time the real property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or to create the required number of jobs, the taxpayer forfeits the credit.

Subsection (c) addresses the mixed use of real property. If a taxpayer uses only part of the property in an eligible business, the amount of the credit is reduced by multiplying

the credit by the percentage of the total square footage of the property that is used in an eligible business.

Subsection (d) provides for expiration of the credit if, in one of the seven installment years, the business property with respect to which the credit is claimed is no longer used in an eligible business. In that case, the taxpayer may not take any remaining installments of the credit for that property. If only part of the property is no longer used in an eligible business, the remaining installments of the credit are reduced by multiplying the credit by the fraction described in subsection (c). If the number of jobs at the establishment is below 200 during the year in which the new job threshold was required to be met or in later installment years, the credit expires and the taxpayer may not take any remaining installments of the credit. In any of these cases, the taxpayer may continue to claim any unused portions of previous installments of the credit that are carried forward under G.S. 105-129.84.

Subsection (e) prohibits a taxpayer from claiming a credit under this section with respect to real property for which the taxpayer claimed a credit under G.S. 105-129.12 or G.S. 105-129.12A.

(Effective for taxable years beginning on or after January 1, 2007; HB 2170, s. 1.1, S.L. 06-252.)

GENERAL ADMINISTRATION

G.S. 105-228.90(b)(1b) – Reference to the Internal Revenue Code Updated: This subdivision was amended to update the reference to the Internal Revenue Code from January 1, 2005 to January 1, 2006. Any amendments to the Internal Revenue Code enacted in 2005 that increase North Carolina taxable income for the 2005 taxable year become effective for taxable years beginning on or after January 1, 2006. This amendment conforms North Carolina tax law to the tax provisions of the federal Energy Tax Incentive Act of 2005, P.L. 109-58, enacted on August 8, 2005; the SAFE Transportation Equity Act of 2005, P.L. 109-59, enacted on August 10, 2005; the Katrina Emergency Tax Relief Act of 2005, P.L. 109-73, enacted on September 23, 2005; and the Gulf Opportunity Zone Act of 2005, P.L. 109-135, enacted on December 21, 2005.

(Effective June 21, 2006; HB 1892, ss. 1 and 2, S.L. 06-18.)

G.S. 105-233 and G.S. 105-234 – Repealed: These sections, which classified certain violations as misdemeanors, were repealed. The violations are covered in G.S. 105-236(9) so these sections are unnecessary.

(Effective July 24, 2006; HB 1963, s. 12(a), S.L. 06-162.)

G.S. 105-236 – Stylistic and Technical Changes: This section was reorganized for stylistic reasons. The technical change is to subdivision (a)(1). Under current law, the bad check penalty did not apply if the drawer of the check had sufficient funds in another account in this State. As amended, the account is not required to be in this State.

(Effective July 24, 2006; HB 1963, s. 12(b), S.L. 06-162.)

G.S. 105-249.2 – Technical Change: The catchline of this statute was amended to change the word "individuals" to "persons" to reflect the fact that the relief provided in subsection (b) for disasters applies equally to all types of tax entities.

(Effective July 24, 2006; HB 1963, s. 18, S.L. 06-162.)

G.S. 105-259(b) – Expansion of Authority to Disclose to a County or City; Stylistic and Conforming Changes; Additional Authority to Disclose: This subsection was amended to expand the authority to disclose tax information to a county or city, to make a stylistic change, to make four conforming changes, and to add an additional subdivision that permits disclosure of tax information. Subdivision 5(d) was rewritten to allow the Department to furnish information to a county or a city annually when the information is needed for the administration of its local room occupancy tax. As amended, the information that may be provided is: (a) the name, address, and identification number of retailers who collect sales and use taxes under Article 5 and may be engaged in a business subject to a local prepared food and beverage tax or room occupancy tax and (b) the name, address, and identification number of a retailer audited by the Department of Revenue for sales and use taxes when the audit results may be of interest to the county or city in the administration of its prepared food and beverage tax or room occupancy tax. Prior to this change, the disclosure provision applied only to information needed by a county or city for purposes of administering the prepared food and beverage tax.

The stylistic change is to subdivision (27). The amendment provides a generic exception for reports required by law instead of listing each specific statute. Subdivisions (30) and (34) were rewritten to conform to the change to subdivision (27). Subdivisions (24) and (27) were rewritten to conform to the new Article 3I.

New subdivision (36) was added to authorize the Department of Revenue to provide to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Department to adjust the amount of the film incentives tax credit claimed by the taxpayer.

*(Expansion of authority to disclose tax information to counties and cities, e*ffective August 3, 2006; HB 1891, s. 11, S.L. 06-196; s*tylistic changes, first two conforming changes, and additional authority to disclose effective for taxable years beginning on or after January 1, 2006; HB 1963, s. 4(c), S.L. 06-162; third and fourth conforming changes effective January 1, 2007; HB 2170, s. 2.21, S.L. 06-252.)*

SALES AND USE TAX DIVISION

SALES AND USE TAX

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

Ancillary service – (01). This definition was added as a result of the incorporation of the Streamlined Sales and Use Tax Agreement definitions related to telecommunications. The term is defined as "a service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections."

(Effective January 1, 2007; HB 1915, s. 1, S.L. 06-33.)

Eligible Internet data center – (8e). This definition was added as a result of a new exemption for eligible Internet data centers. The term is defined as "a facility that satisfies each of the following conditions: (a) The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by NAICS. (b) The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility. (c) The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status. (d) The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.

(Effective October 1, 2006 for sales made on or after that date; SB1741, s. 24.17(a), S.L. 06-66. Effective date changed to July 10, 2006; HB 2744, s. 4.3, S.L. 06-168 and HB 2170, s. 2.25(c), S.L. 06-252. Punctuation corrections made; effective July 27, 2006; HB 2744, s. 4.1, S.L. 06-168. Addition of "development tier one or two area" to location requirement of the facility effective January 1, 2007; HB 2170, s. 2.25(a1), S.L. 06-252.)

NAICS – (23a). This definition was added as a result of a new exemption for Internet data centers. The term is defined as "The North American Industry Classification

System adopted by the United States Office of Management and Budget as of December 31, 2002."

(Effective October 1, 2006 for sales made on or after that date; SB 1741, s. 24.17(a), S.L. 06-66. Effective date of the definition changed to July 10, 2006; HB 2744, s. 4.3, S.L. 06-168 and HB 2170, s. 2.25(c), S.L. 06-252.)

NAICS – (23a). This definition was amended to reference the definition in Article 3I, Tax Credits for Growing Businesses; it provides that the term has the same meaning as in G.S. 105-129.81.

(Effective January 1, 2007; HB 2170, s. 2.26, S.L. 06-252.)

Prepaid telephone calling service – (27). This definition was amended as a result of the incorporation of the Streamlined Sales and Use Tax Agreement definitions related to telecommunications; it includes two types of prepaid services. The term is defined as "prepaid wireline calling service or prepaid wireless calling service."

(Effective January 1, 2007; HB 1915, s. 1, S.L. 06-33.)

Prepaid wireline calling service – (27a). This definition was added as a result of the incorporation of the Streamlined Sales and Use Tax Agreement definitions related to telecommunications. This new definition is almost identical to the current definition of "prepaid telephone calling service." The term is defined as "a right that meets all of the following requirements:

- Authorizes the exclusive purchase of wireline telecommunications service.
- Must be paid for in advance.
- Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis."

(Effective January 1, 2007; HB 1915, s. 1, S.L. 06-33.)

Prepaid wireless calling service – (27b). This definition was added as a result of the incorporation of the Streamlined Sales and Use Tax Agreement definitions related to telecommunications. The term is defined as "a right that meets all of the following requirements:

- Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- Must be paid for in advance.

- Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(Effective January 1, 2007; HB 1915, s. 1, S.L. 06-33.)

Professional motorsports racing team – (30a). This definition was added as a result of refunds authorized for motorsports racing teams. The term is defined as "a racing team that satisfies all of the following conditions: (a) is operated for profit, (b) a majority of the revenues of the team is derived from sponsorship of the racing team and prize money, and (c) the team competes in at least sixty-six percent (66%) of the races sponsored in a single season by a motorsports sanctioning body." As a result of this definition being designated as (30a), the definition of prosthetic device was renumbered as (30b).

(Effective July 1, 2007 for purchases made on or after that date; SB 1741, s. 24.10(a), S.L. 06-66.)

Streamlined Agreement – (45a). This definition was amended to reflect November 2005 as the most recent date of amendments to the Agreement.

(Effective January 1, 2007; HB 1915, s. 1, S.L. 06-33.)

Telecommunications service – (48). This definition was amended as a result of the incorporation of the Streamlined Sales and Use Tax Agreement definitions related to telecommunications. The term is defined as "the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.
- The sale, installation, maintenance, or repair of tangible personal property.
- Directory advertising and other advertising.
- Billing and collection services provided to a third party.
- Internet access service.
- Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.

- Ancillary service.
- A digital product delivered electronically, including software, music, a ring tone, video, and reading material."

(Effective January 1, 2007; HB 1915, s. 1, S.L. 06-33.)

Use – (49). This definition was rewritten to modernize the language and to clarify that "use" also includes the exercise of any right, power, or dominion over a service; prior to the change, the definition referred only to tangible personal property.

(Effective July 24, 2006; HB 1963, s. 5(a), S.L. 06-162.)

Video programming – (50c). This definition was added as a result of a change in the taxation of broadcast services. The term is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

(Effective January 1, 2007; HB 2047, s. 2, S.L. 06-151.)

G.S. 105-164.4(a) – Decrease in State Sales Tax Rate: The State general sales and use tax rate will decrease from 4.5% to 4.25% effective December 1, 2006. It will decrease from 4.25% to 4% effective July 1, 2007. The additional ½% State tax, which became effective October 16, 2001, was scheduled to be repealed in its entirety July 1, 2007.

As a result of the decrease in the State general rate of tax, the combined general rate on sales of telecommunications service, ancillary service, video programming (including cable and direct-to-home satellite service), and spirituous liquor will decrease from 7% to 6.75% effective December 1, 2006, and from 6.75% to 6.5% effective July 1, 2007.

(Decrease from 4.5% to 4.25% effective December 1, 2006 for sales made on or after that date; SB 1741, s. 24.1(b), S.L. 06-66. Decrease from 4.25% to 4% effective July 1, 2007 for sales made on or after that date; SB 1741, s. 24.1(c), S.L. 06-66.)

G.S. 105-164.4(a)(1b) – Tax on Railway Cars and Locomotives: This subdivision, which levied 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 are 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 levied 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 are 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 are subject to the privilege tax under Article 5F. The remainder of the items that were listed in this subdivision are exempt from the sales tax and are not 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 levied 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 applied included 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 are subject to the general State rate and applicable local rate of tax. Manufacturing machinery and qualifying recycling facility equipment are subject to the new privilege tax under Article 5F effective January 1, 2006. The remainder of the items that were listed in G.S. 105-164.4A are exempt from the sales and use tax and are not 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 levied 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 are 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)(1f)b. – Tax on Electricity Sold to Manufacturers: This sub-subdivision, which levies a State sales and use tax at the rate of 2.83% on sales of electricity to manufacturers, was repealed. A new subdivision (1i) provides for a reduction in the rate.

(Effective July 1, 2007 for sales made on or after that date; SB 1741, s. 24.19(a), S.L. 06-66.)

G.S. 105-164.4(a)(1i) – Tax on Electricity Sold to Manufacturers: This is a new subdivision that levies a State sales and use tax at the rate of 2.6% on electricity sold to a manufacturing industry or plant for use in connection with the operation of the industry or plant; the electricity must be measured by a separate meter or another separate

device. Prior to this change, electricity sold to a manufacturer for a qualifying purpose is subject to a State rate of 2.83%.

(Effective July 1, 2007 for sales made on or after that date; SB 1741, s. 24.19(b), S.L. 06-66.)

G.S. 105-164.4(a)(4c) – Tax on Telecommunications Service: This subdivision, which levies the combined general rate on the gross receipts derived from providing telecommunications service, was rewritten to add "ancillary service" to the types of services subject to the combined general rate. Most ancillary services are included in the current definition of "telecommunications service" and are therefore taxed as telecommunications prior to January 1, 2007.

(Effective January 1, 2007; HB 1915, s. 2, S.L. 06-33.)

G.S. 105-164.4(a)(4d) – Tax on Prepaid Wireless Calling Service: This subdivision, which levies the general State and applicable local rates of tax on prepaid telephone calling service, was rewritten to specify that the tax also applies to a service sold in conjunction with prepaid wireless calling service.

(Effective January 1, 2007; HB 1915, s. 2, S.L. 06-33.)

G.S. 105-164.4(a)(6) – Tax on Cable Service: This subdivision expanded the levy of the combined general rate of tax to include the gross receipts derived from providing cable service in addition to direct-to-home satellite service.

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

G.S. 105-164.4(a)(6) – Tax on Video Programming: This subdivision was rewritten and provides that the combined general rate of tax applies to the gross receipts derived from providing video programming to subscribers in this State. Video programming includes, but is not limited to, cable service and direct-to-home satellite service. A person engaged in the business of providing any type of video programming is considered a retailer and is liable for collecting the applicable tax on those services.

(Effective January 1, 2007; HB 2047, s. 3, S.L. 06-151.)

G.S. 105-164.4(a)(6a) – Tax on Satellite Digital Audio Radio Service: This 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)(8) – Credit for Sellers of Modular Homes: This subdivision was rewritten to allow a person selling a modular home at retail a credit against the North Carolina sales or use tax for sales or use tax paid to another state on tangible personal property incorporated in the modular home. As rewritten, it also provides that the retail sale occurs when the modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.

(Effective July 1, 2006 for purchases made on or after that date; HB 1915, s. 11, S.L. 06-33.)

G.S. 105-164.4A – Items Taxed at 1%, $80 Maximum: This section, which listed articles subject to a 1% State rate of sales or use 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. 105-164.4B(a)(3) – Sourcing Principles: This subdivision provides that, when the delivery address is unknown, the sale of the product is sourced to the first of three specific addresses or locations known to the seller. The subdivision was rewritten to replace the term “telephone calling service that authorizes the purchase of mobile telecommunications service” with the term “prepaid wireless calling service.”

(Effective January 1, 2007; HB 1915, s. 3, S.L. 06-33.)

G.S. 105-164.4B(b) – Sourcing of Rental Payments for Utility Company Railway Cars: This subsection was rewritten to provide that the sourcing principles set out in subdivision (1) for periodic rental payments do not apply to a utility company railway car. A new subdivision (4) was added to provide that payments for a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce are sourced under the general sourcing principles rather than under the sourcing principles for periodic rental payments.

(Effective July 1, 2006 for lease or rental payments made on or after that date; SB 1741, s. 24.13(a), S.L. 06-66.)

G.S. 105-164.4C – Tax on Telecommunications: Subsection (a) of this section, which provides that the gross receipts derived from providing telecommunication service are subject to tax, was rewritten to add the term “ancillary service.” Most ancillary services are currently subject to the applicable tax as part of telecommunications. As rewritten, the section also provides that “ancillary service” is provided in this State if the telecommunications service to which it is ancillary is provided in this State.

Subsection (a2), which sets out sourcing exceptions for telecommunications service, incorporates the new term “prepaid wireless calling service.”

Subsection (b), which sets out receipts and charges that are specifically included in the term "gross receipts," was deleted. The charges remain taxable but are taxable either as a "telecommunications service" or an "ancillary service."

Subsection (c), which sets out receipts and charges that are specifically excluded from the term "gross receipts," was deleted. Most of the charges continue to be exempt from the tax; the charges are either specifically excluded from the definition of "telecommunications service" or are specifically exempt from tax under G.S. 105-164.13. The only exceptions are surcharges imposed to recoup assessments for the Universal Service Fund and charges for all paging service; these charges are taxable effective January 1, 2007.

Subsection (h), which sets out definitions that apply in this section, was rewritten to add a definition of "ancillary service." The term has the same meaning as in G.S. 105-164.3. The definition of "postpaid calling service" was also amended to clarify that it includes a service that meets the requirements of a prepaid wireline telephone calling service.

(Effective January 1, 2007; HB 1915, s. 4, S.L. 06-33.)

G.S. 105-164.4C(d) – Bundled Services: This subsection, which provides for the taxation of bundled services of taxable telecommunications service and a nontaxable service, was recodified as G.S. 105-164.4D.

(Effective January 1, 2007; HB 2047, s. 4, S.L. 06-151.)

G.S. 105-164.4D – Bundled Services: This is a new section created by recodifying and rewriting the existing subsection for bundled services. As rewritten, the application of tax applies to any taxable service that is bundled with a nontaxable service.

(Effective January 1, 2007; HB 2047, s. 5, S.L. 06-151.)

G.S. 105-164.6(c) – Credit: This subsection was rewritten to clarify that credit against use tax due in North Carolina for use tax paid to another state; prior to this change, the statute provided a credit for sales tax paid to another state but was silent with regard to use tax paid to another state.

(Effective July 24, 2006; HB 1963, s. 6, S.L. 06-162.)

G.S. 105-164.7 – Sales Tax Part of Purchase Price: A minor stylistic change was made to this section.

(Effective July 24, 2006; HB 1963, s. 7, S.L. 06-162.)

G.S. 105-164.12B – Tangible Personal Property Bundled with Service Contract: The catch line of this section was rewritten to clarify that the section applies to tangible

personal property that is bundled with a service contract. There is no change in the content of the section.

(Effective January 1, 2007; HB 2047, s. 6, S.L. 06-151.)

G.S. 105-164.13 – Exemptions and Exclusions: The 2006 Session of the General Assembly added several new exemptions, revised some of the existing exemptions, and repealed some of the exemptions. Also included are exemptions added by the 2005 Session that became effective during 2006. The changes and their effective dates are as follows:

Potting soil, farm machinery, and fuel – (1). The 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 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.)

Sales to farmers – (1a). The exemption for certain containers sold to farmers exemption was rewritten to incorporate an existing exemption for sales of grain, feed, or soybean storage facilities and parts and accessories attached to the facilities with the exemption. By incorporating the exemption for storage facilities, it clarifies that such facilities must be sold to a farmer in order to qualify for the exemption.

(Effective July 24, 2006; HB 1963, s. 8(a), S.L. 06-162.)

Semen used in artificial insemination of animals – (2a). The 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 was 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 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 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; 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 were 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 an exemption for grain, feed, or soybean storage facilities and parts and accessories attached to the facilities. Prior to January 1, 2006, these items were 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 exemption was repealed, rewritten, and incorporated into existing exemption (1a).

(Effective July 24, 2006; HB 1963, s. 8(b), S.L. 06-162.)

Commercial logging machinery – (4f). This is a new exemption for sales to a person engaged in the commercial logging business of the following: (a) logging machinery (machinery used to harvest raw forest products for transport to first market); (b) attachments and repair parts for logging machinery; (c) lubricants applied to logging machinery; and (d) fuel used to operate logging machinery. Items exempt under this subdivision are also exempt from the privilege tax under Article 5F.

(Effective July 1, 2006 for items purchased on or after that date; HB 1938, ss. 1 and 2, S.L. 06-19.)

Mill machinery – (5a). The 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 an 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 an 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 an 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 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 were 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 was 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 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 are no longer subject to the sales or use tax. However, any tangible personal property, such as caskets or vaults, sold in connection with funeral services are 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.)

Interstate passenger air carrier purchases – (45). The 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 were subject to a 1% State rate of tax with a maximum tax of $80.00 per article. A separate 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 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 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 were 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.)

Telecommunications services and charges – (54). This is a new exemption for sales of specific telecommunications services and charges. These charges are currently exempt from the tax since the law provides that they are specifically excluded from gross receipts. The services and charges were moved to the exemption section of the statutes and are separately set out below.

- Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network,

interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. 251(c)(3).

- Pay telephone service.
- 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.
- Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.
- Telecommunications service purchased by a State agency or a unit of local government for the North Carolina Information Highway or another data network owned or leased by the State or unit of local government.

(Effective January 1, 2007; HB 1915, s. 5, S.L. 06-33.)

Electricity and eligible business property for an Internet data center – (55). This is a new exemption for sales to an eligible Internet data center of electricity for use at the center and eligible business property to be located and used at the center. Eligible business property is property that is capitalized for tax purposes under the Code and is used for one of the following: (a) to provide Internet service or Web search portal services as contemplated under G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property, (b) to generate, transform, transmit, distribute, or manage electricity, including exterior substations and other business personal property used for these purposes, or (c) to provide related computer engineering or computer science research. This subdivision also contains provisions for forfeiture if the required investment level is not met, if the property is not located and used at the center, or if any portion of the electricity is not used at the center, and provisions for liabilities incurred as a result of forfeiture.

(Effective October 1, 2006 for sales made on or after that date; SB 1741, s. 24.17(b), S.L. 06-66. Identical minor stylistic changes made in two bills effective October 1, 2006; HB 2744, s. 4.2, S.L. 06-168 and HB 2170, s. 2.25(b), S.L. 06-252.)

G.S. 105-164.14(a1) – Passenger Plane Maximum: This subsection, which 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, was rewritten to extend the sunset of the refunds. As rewritten, this subsection is repealed for purchases made on or after January 1, 2009; the original legislation contained a repeal date of January 1, 2007.)

(Effective July 10, 2006; SB 1741, s. 24.6(b), S.L. 06-66.)

G.S. 105-164.14(a2) – Utility Company Refund: This is new subsection that authorizes a semiannual refund to a utility company of part of the sales and use taxes it

pays on the purchase in this State of railway cars and locomotives and accessories for railway cars and locomotives operated by a utility. The refund is based on the ratio of the number of miles the railway car or locomotive is operated in this State to the number of miles of operation both inside and outside the State. The subsection sets out the information that must be furnished by the applicant and explains the method of computing the refund.

(Effective July 1, 2006 for purchases made on or after that date; SB 1741, s. 24.13(b), S.L. 06-66.)

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(b) and (c) – Refunds to Certain Organizations: These subsections were rewritten to add "ancillary service" to types of services for which a sales tax refund cannot be claimed.

(Effective January 1, 2007; HB 1915; s. 6, S.L. 06-33.)

G.S. 105-164.14(c) – Annual Reporting Requirement: This subsection was rewritten to delete the requirement that the Secretary make an annual report of the amount of refunds claimed under subdivisions (2b) and (2c) for a local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf, respectively.

(Effective July 24, 2006; HB 1963, s. 27, S.L. 06-162.)

G.S. 105-164.14(d1) – No Refunds of Tax on Alcoholic Beverages: This new subsection provides that the refunds authorized under this section do not apply to tax paid on purchases of alcoholic beverages.

(Effective July 1, 2006 for purchases made on or after that date; SB 1741, s. 24A.1(a), S.L. 06-66.)

G.S. 105-164.14(h) – Refunds for Low Enterprise or Development Tier Machinery: This subsection was rewritten as a result of changes in the Bill Lee Act. A new scheme of 3 development tier areas is added to the scheme of 5 enterprise tier areas. The refund provision for low enterprise tier machinery was amended to add the development tier terminology.

(Effective January 1, 2007; HB 2170, s. 2.2, S.L. 06-252.)

G.S. 105-164.14(j)(2) – Refunds to Certain Industrial Facilities - Eligibility:
This subdivision was rewritten to add a third condition that must be met in order for a facility to be eligible for refunds. New sub-subdivision c. requires that, for a facility that is primarily engaged in financial services, securities operations, and related systems development, the facility must be owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A and no part of the facility is leased to a third-party tenant that is not a related entity of the business.

Sub-subdivision b. of this subdivision was rewritten to provide that, for the purpose of this refund, the term "facility" has the same meaning as under G.S. 105-129.61; prior to this change, the term as defined in the Franchise Tax statutes applied only to a computer manufacturing facility.

(Addition of eligibility requirement effective July 1, 2006 for purchases made on or after that date; provision for definition of "facility" effective January 1, 2005 for sales made on or after that date; HB 2744, s. 3.1, S.L. 06-168.)

G.S. 105-164.14(j)(2) – Refunds to Certain Industrial Facilities - Eligibility: Sub-subdivision b., which sets out the required investment amount based on the location of the facility, was rewritten to replace "an enterprise tier one, two, or three area as defined in G.S. 105-129.3" with "a development tier one area as defined in G.S. 143B-437.08." As rewritten, if the facility is located in a development tier one area as defined in G.S. 143B-437.08, the amount of private funds required to be invested to construct the facility in North Carolina is $50,000,000. The remainder of the refund provisions for certain industrial facilities is unchanged.

(Effective January 1, 2007; HB 2170, s. 2.3, S.L. 06-252.)

G.S. 105-164.14(j)(3) – Refunds to Certain Industrial Facilities – New Industry:
This subdivision 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 sub-subdivision f. provides that the owner of a facility that provides financial services, securities operations, and related systems development is eligible for an annual refund of sales and use taxes paid by it on qualified building materials, building supplies, fixtures and equipment that become a part of the real property. "Financial services, securities operations, and related systems development" means one or both of the following: (1) performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration; (2) developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for investment banking, securities dealing and brokering, securities trading and

underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

(Effective July 1, 2006 for purchases made on or after that date; HB 2744, s. 3.1, S.L. 06-168.)

G.S. 105-164.14(j)(5) – Sunset for Refunds to Certain Industrial Facilities: This subdivision was rewritten to extend the sunset for the refund provision for certain industrial facilities three years. Subdivision (5) provides that the subsection authorizing refunds to certain industrial facilities is repealed for sales made on or after January 1, 2013.

(Effective July 1, 2006 for purchases made on or after that date; HB 2744, s. 3.1, S.L. 06-168.)

G.S. 105-164.14(k) – Reports: This 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) – Reports: This subsection, which requires the Department to publish information on the number of taxpayers claiming a refund allowed under G.S. 105-164.14(g), (h), (i), and (j), was rewritten to add subsections (a1) for passenger plane maximum and (l) for motorsports aviation fuel refund to the list for which information must be provided.

(Amendment effective July 24, 2006; HB 1963, s. 9, S.L. 06-162.)

G.S. 105-164.14(l) – Refunds of Tax on Aviation Fuel for Motorsports Events: This subsection was rewritten to clarify that the refund of sales and use tax authorized is for a professional motorsports racing team or sanctioning body. The refund applies to sales and use tax paid by the qualifying entity in this State on aviation fuel used to travel to or from a motorsports event in this State, to a motorsports event in another state from a location in this State, or to this State from a motorsports event in another state. The sunset of the legislation was also extended. As rewritten, this subsection is repealed for purchases made on or after January 1, 2009; the original legislation contained a repeal date of January 1, 2007.

(Effective July 10, 2006; SB 1741, s. 24.6(a), S.L. 06-66.)

G.S. 105-164.14(m) – Refunds of Tax on Professional Motor Racing Vehicles: This is a new subsection that authorizes a refund of fifty percent (50%) of the sales and use tax paid by a professional motorsports racing team in this State on certain tangible personal property that comprises any part of a professional motor racing vehicle. The refund provision does not apply to tires or to accessories such as instrumentation, telemetry, consumables, and paint. A refund request is due within six months after the end of the State's fiscal year and is barred if filed after the due date.

(Effective July 1, 2007 for purchases made on or after that date; SB 1741, s. 24.10(b), S.L. 06-66.)

G.S. 105-164.15A(1) – Effective Date of Rate Change for Services: This subsection was rewritten to define the "effective date of a rate increase" for services that are billed after they are provided and for services billed before they are provided. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(Effective July 24, 2006; HB 1963, s. 10, S.L. 06-162.)

G.S. 105-164.16 – Prepayments In Lieu of Semimonthly Payments: This section was rewritten to delete the requirement for semimonthly payments for taxpayers who are consistently liable for at least ten thousand dollars a month in State and local sales and use taxes. A taxpayer in this category must make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due, which is the 20th of the month following the calendar month covered by the return. The prepayment must be at least 65% of any of the following: (1) the amount of tax due for the current month, (2) the amount of tax due for the same month in the preceding year, or (3) the average monthly amount of tax due in the preceding calendar year.

(Effective October 1, 2007; HB 1915, s. 9, S.L. 06-33.)

G.S. 105-164.16(a) – Returns and Payments: This subsection was rewritten to clarify that purchases of taxable services as well as tangible personal property must be reported on the use tax return.

(Effective July 24, 2006; HB 1963, s. 5(b), S.L. 06-162.)

G.S. 105-164.21B – Credit for Local Cable Television Franchise Taxes: This section was added as a result of the 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. 105-164.21B – Repeal of Credit for Local Cable Television Franchise Taxes: This section was repealed as a result of changes to the franchising laws for cable television service. Since cable service providers will no longer pay local franchise tax to local governments, there is no reason to allow a credit against the sales tax imposed.

(Effective January 1, 2007; HB 2047, s. 9, S.L. 06-151.)

G.S. 105-164.27A(b) – Direct Pay for Telecommunications: This subsection was rewritten to add "ancillary service" to the list of services that can be purchased with a direct pay permit for telecommunications.

(Effective January 1, 2007; HB 1915, s. 7, S.L. 06-33.)

G.S. 105-164.42H(a)(3) – Certified Automated System Requirement: This subdivision provided that, to be certified as a certified automated system, the software program had to be able to determine if an exemption certificate offered by a purchaser is valid based on the Department's registry of exempt taxpayers. The subdivision was repealed since the Streamlined Sales and Use Tax Agreement does not require that a seller using a certified automated system verify the validity of an exemption number.

(Effective June 1, 2006; HB 1915, s. 12, S.L. 06-33.)

G.S. 105-164.44F(a) – Telecommunications Tax Distribution to Cities: This subsection, which authorizes a distribution of a portion of the sales tax imposed on telecommunications service to cities, was rewritten to provide that a portion of the tax on ancillary service is also included in the distribution.

(Effective January 1, 2007; HB 1915, s. 8, S.L. 06-33.)

G.S. 105-164.44F(a) – Distribution of Sales Tax on Telecommunications: This subsection, which authorizes the distribution of part of the sales tax on telecommunications service to cities, was rewritten to add a provision for a distribution of a percentage of the sales tax imposed on telecommunications service to counties and cities. The percentage (18.03%) to be distributed to cities was unchanged; 7.23% of the taxes collected on telecommunication service will be distributed to counties and cities as provided in new section G.S. 105-164.44I.

(Effective January 1, 2007 and applies to the distribution made within 75 days after March 31, 2007 for the quarter starting January 1, 2007; HB 2047, s. 7, S.L. 06-151. The percentage to be distributed to cities was increased to 18.70%; the percentage to be distributed to counties and cities under G.S. 105-164.44I was increased to 7.7%. Effective January 1, 2007 for taxes collected on or after that date; SB 1741, s. 24.1(f), S.L. 06-66. The percentage to be distributed cities will further increase to 19.42%; the percentage to be distributed to counties and cities under G.S. 105-164.44I will increase to 8%. Effective July 1, 2007 for taxes collected on or after that date; SB 1741, s. 24.1(g), S.L. 06-66.)

G.S. 105-164.44H – Transfer to Public School Fund: This section 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.)

G.S. 105-164.44I – Distribution of Sales Tax on Video Programming and Telecommunications: This is a new section that authorizes a quarterly distribution to counties and cities of part of the sales taxes imposed on telecommunications service and video programming service. The percentage of net proceeds of taxes collected during the quarter on video programming other than direct-to-home satellite service to be distributed to counties and cities is 22.61%. The percentage for direct-to-home satellite service is 37%. The section provides for supplemental PEG channel support and requires a county or city to certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. There are special provisions for the 2006-2007 fiscal year distribution as a result of the change in franchising from the local level to the state level. Subsequent distributions use the 2006-2007 distribution amounts multiplied by the percentage change in the county or city's population. The section also provides instruction as to the use of proceeds, late information, city changes, and ineligible cities.

(Effective January 1, 2007 and applies to the distribution made within 75 days after March 31, 2007 for the quarter starting January 1, 2007; HB 2047, s. 8, S.L. 06-151. The percentage for video programming other than direct-to-home satellite service to be distributed to counties and cities was increased to 23.6%; the percentage for direct-to-home satellite service to be distributed to counties and cities was increased to 37.1%. Effective January 1, 2007 for taxes collected on or after that date; SB 1741, s. 24.1(h), S.L. 06-66. The percentage for video programming other than direct-to-home satellite service will further increase to 25%; the percentage for direct-to-home satellite service will further increase to 37.5%. Effective July 1, 2007 for taxes collected on or after that date; SB 1741, s. 24.1(i), S.L. 06-66.)

Chapter 66 of the 2006 Session Laws – State General Rate: This act deletes the provision that repealed the additional .5% State rate effective July 1, 2007. The

incremental repeal of the additional State rate is set out in G.S. 105-164.4(a), as amended.

(Effective July 10, 2006; SB 1741, s. 24.1(a), S.L. 06-66.)

Chapter 66 of the 2006 Session Laws – Extend Sunsets on Refunds: This act deletes the provision regarding the repeal of the refunds for motorsports events and passenger plane maximums. The effective dates of the repeals were included in the rewrites of the appropriate subsections authorizing the refunds.

(Effective July 10, 2006; SB 1741, s. 24.6(c), S.L. 06-66.)

Chapter 151 of the 2006 Session Laws – PEG Channel Certification: In order to make the distribution required under G.S. 105-164.44I(b) for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by March 15, 2007 the number of qualifying PEG channels it operates.

(Effective January 1, 2007; HB 2047, s. 16, S.L. 06-151.)

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. 105-467(b) – Local School Administrative Unit Refunds: This subsection was rewritten to provide an annual refund of local sales and use taxes to a local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related material, supplies, and equipment on their behalf. The State sales and use tax is not subject to refund. The refund provision applies to direct purchases of tangible personal property and services, other than electricity, and telecommunications service and to indirect purchases of building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity. The refund request is due within six months after the end of the entity's fiscal year, and refunds requested more than three years after the due date are barred.

(Effective July 1, 2005 for sales made on or after that date; SB 1741, s. 7.20(a), S.L. 06-66.)

G.S. 105-467(b) – Local School Administrative Unit Refunds: This subsection was further rewritten to add "ancillary service" to the list of services for which the sales tax is not subject to refund.

(Effective January 1, 2007; HB 1963, s. 32, S.L. 06-162.)

G.S. 105-501 – Distribution of Second One-Half Cent Sales and Use Taxes: This section was rewritten to reflect the change in the name of the Institute of Government to the School of Government at the University of North Carolina at Chapel Hill. In determining the net proceeds of the second one-half cent sales and use tax to be distributed to counties and municipalities, one-twelfth of this entity's costs in operating a training program in property tax appraisal and assessment (in addition to other costs) is deducted from the collections to be allocated.

(Effective August 27, 2006; SB 602, s. 29(f), S.L. 06-264.)

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 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 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.)
(Provision for 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 section imposes the 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 section imposes the 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.)

G.S. 105-187.51B – Privilege Tax on Recyclers and Research and Development Companies: This section was rewritten to expand the imposition of the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article to include a research and development company in the physical, engineering, and life sciences that is included in industry 54171 of NAICS. The privilege tax will apply to the purchase of equipment or an attachment or repair part for equipment that meets all of the following requirements: (a) is capitalized by the company for tax purposes under the Code, (b) is used by the company in the research and development of tangible personal property, and (c) would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant. Purchases by research and development companies are currently subject to the combined State and local sales or use tax.

(Effective January 1, 2007; SB 1741, s. 24.9(a), S.L. 06-66. Effective date changed to July 1, 2007; HB 1891, s. 12, S.L. 06-196.)

G.S. 105-187.52 – Credit for Tax Paid to Other States: This section was rewritten to add new subsection (b) that allows a credit for a sales or use tax, a privilege or excise tax, or a substantially equivalent tax paid to another state against the privilege tax imposed in Article 5F. The credit is allowed only if that state grants a similar credit for the privilege tax paid in North Carolina.

(Effective July 24, 2006; HB 1963, s. 11, S.L. 06-162.)

G.S. 105-187.53 – Commercial logging items: This is a new section that provides an exemption from the privilege tax for items that are exempt under G.S. 105-164.13(4f). Prior to this change, qualifying machinery and equipment purchased by commercial loggers were subject to the privilege tax.

(Effective July 1, 2006 for items purchased on or after that date; HB 1938, s. 2, S.L. 06-19.)

Chapter 66 of the 2006 Session Laws – Effective Date of Privilege Tax for Research and Development Companies: This act changes the effective date of the

imposition of the privilege tax on research and development companies from January 1, 2007 to July 1, 2007.

(Effective August 3, 2006; HB 1891, s. 12, S.L. 06-196.)

PROPERTY TAX DIVISION

G.S. 39-60 — Property Tax Proration on Sale of Real Property: This bill codifies an existing real estate industry practice by requiring that property taxes on real property being sold must be prorated between the buyer and seller on a calendar-year basis, unless otherwise specified by contract.

(Effective for contracts entered into on or after October 1, 2006; SB 1451, S.L. 2006-106 s. 7.)

G.S. 105-273(8a) — Defines Certain Modular Homes as Inventory: This bill expands the definition of "inventories" to include modular homes as defined in G.S. 105-164.3(21b) that are used exclusively as display models and held for eventual sale at the retail merchant's place of business.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2006; SB 1451, S.L. 2006-106 s. 8.)

G.S. 105-273(17) — Modifies Definition of Taxpayer for Delinquent Real Property Taxes: This bill states that, for purpose of collecting delinquent real property taxes, "taxpayer" means the owner of record on the date the taxes become delinquent. "Taxpayer" also means any subsequent owner of record of the real property conveyed after the date the taxes became delinquent.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2006; SB 1451, S.L. 2006-106 s. 1.)

G.S. 105-277.4(a1) — Provides for Untimely Applications for Present-Use Value Properties: This bill adds new subsection (a1), which allows an applicant for present-use value classification to file an untimely application, where previously no such provision existed. The untimely application applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. The applicant must show good cause for failure to file timely, and the untimely application may be approved by the board of equalization and review or, if that board is not in session, by the county commissioners.

(Effective June 29, 2006; HB 2097, S.L. 2006-30 s. 4.)

G.S. 105-304(a1) and G.S. 105-307 — Provides for the Electronic Listing of Personal Property: This bill allows the county commissioners to adopt a resolution

providing for the electronic listing of personal property and specifies that any general extension of the listing period for electronic listing applies only to business personal property electronic listings.

(Effective June 29, 2006; HB 2097, S.L. 2006-30 s. 1 and s. 2.)

G.S. 105-321(d) — Repealed due to enactment of new G.S. 105-378(d).

(Effective June 29, 2006; HB 2097, S.L. 2006-30 s. 5.)

G.S. 105-330.10 — Clarifies the Proper Percentage of First's Month Interest on Unpaid Motor Vehicle Taxes to be Transferred to the Treasurer's Office: This bill clarifies that sixty percent (60%) of only the first month's interest collected on unpaid taxes pursuant to G.S. 105-330.4 will be transferred to the Combined Motor Vehicle and Registration Account created in the Treasurer's Office.

(Effective June 29, 2006; HB 2097, S.L. 2006-30 s. 3.)

G.S. 105-369 — Change Notice to Owner Requirements and Advertisement Requirements for Failure to Pay Real Property Taxes: Notice of advertisement must no longer be sent to both the listing and record owner. Notice is sent only to the record owner as determined as of the date the taxes became delinquent. Advertisement in the newspaper will also be only in the name of the record owner as determined as of the date the taxes became delinquent.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2006; SB 1451, S.L. 2006-106 s. 2.)

G.S. 105-374(c) — Parties to Summonses in Foreclosure Proceeding: The listing owner will no longer be made party to a court action to foreclose a mortgage. The owner of record as of the date the taxes became delinquent and any subsequent owner shall be made parties to the action and served with summonses.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2006; SB 1451, S.L. 2006-106 s. 3.)

G.S. 105-375 — Changes to Procedures for In Rem Method of Foreclosure: This bill makes several changes due to the change in the definition of taxpayer in Section 1 of this bill and adds additional language regarding reasonable notice to the taxpayer. The certificate of taxes and notice to taxpayer must reflect the name of the taxpayer as now defined in G.S. 105-273(17) and any reference to the listing owner is removed. If the tax collector has not received a return receipt indicating the receipt of the notice to the taxpayer within 10 days of the mailing of the notice to the taxpayer, the tax collector must make reasonable efforts to locate and notify the taxpayer and all lienholders prior to the docketing of the judgment and the issuance of the execution. If the sheriff has not received a return receipt indicating the receipt of the notice of execution within 10

days of the mailing of the notice to the taxpayer, the sheriff must make additional efforts to locate and notify the taxpayer and all lienholders of the sale under execution.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2006; SB 1451, S.L. 2006-106 s. 4, s. 5, and s. 6.)

G.S. 105-378(d) and G.S. 105-373(a) — Enforcement and Collection Delayed Pending Appeal: This bill replaces the provisions of G.S. 105-321(d) (repealed) which had previously prohibited the delivery of the tax receipt to the tax collector for any appeal to the Property Tax Commission until the appeal had been finally adjudicated. New subsection (d) in G.S. 105-378 allows the delivery of the tax receipt to the tax collector for any property that has been appealed to the Property Tax Commission. However, the tax collector cannot seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The collector may send an initial bill or notice to the taxpayer. At the annual settlement for current taxes, the tax collector will be credited with the principal amount of taxes for any assessment if the appeal has not been finally adjudicated.

(Effective June 29, 2006; HB 2097, S.L. 2006-30 s. 6 and s. 7.)

G.S. 105-380 — Property tax due date changed: Provides that the governing body of a taxing unit may collect property taxes for certain newly annexed property over a three-year period and delay the accrual of interest accordingly.

(Effective July 10, 2006; SB 1372, S.L. 06-72.)

G.S. 161-31 — Collection of Delinquent Property Taxes: Adds Tyrrell County 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 July 1, 2006; HB 1806, S.L. 06-16.)

G.S. 161-31 — Collection of Delinquent Property Taxes: Adds Davie and Lincoln 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. Also allows these counties to require all taxes be paid before a building permit may be issued with respect to that property.

(Effective July 20, 2006; HB 2339, S.L. 06-150.)

Section 13 of S.L. 2005-294 (HB 1779) is rewritten to change the effective dates of sections 1,2,3,5,6,7,9,10, and 11 to July 2010.

(Effective August 23, 2006; SB 1523, S.L. 06-259.)

S.L. 2006-106 Section 9 — Revenue Laws Study Committee to Study Present-Use Value: The Revenue Laws Study Committee shall study and recommend any changes to the present-use value program. The study shall include: (1) expanding the present-use value program to include wildlife land and other conservation land, and (2) adding more specific land resource management criteria to the sound management programs for lands enrolled in the present-use value program. The Committee must make a report to the 2007 General Assembly.

(Effective July 13, 2006; SB 1451, S.L. 2006-106 s. 9.)

MOTOR FUELS

G.S. 105-449.48 – Repealed: This statute was repealed since all civil penalties must be credited to the Civil Penalties and Forfeiture Fund.

(Effective July 24, 2006; HB 1963, s. 12.(c), S.L. 06-162.)

G. S. 105-449.49 – Conforming: This statute was amended to identify that collections of temporary permit fees are credited to the Highway Fund. This change was necessary as G.S. 105-449.48, which included this language, was repealed during this legislative session.

(Effective July 24, 2006; HB 1963, s. 12.(d), S.L. 06-162.)

G.S. 105-449.60 – Definition: This statute was amended to add a definition for exempt card or code. An exempt access card or code allows an exempt entity to purchase fuel, at retail, without paying the excise tax on the motor fuel.

(Effective January 1, 2007; HB 1963, s. 14.(a), S.L. 06-162.)

G.S. 105-449.65(b) – Clarifying: This statute was amended to clarify that a person who is licensed as a distributor or blender and also transports motor fuel is considered to be licensed as a motor fuel transporter.

(Effective July 1, 2007; HB 1963, s. 13.(a), S.L. 06-162.)

G.S. 105-449.80(a) – Fuel Tax Rate Cap: This statute was amended to cap the variable wholesale component of the motor fuel excise tax at 12.4¢ per gallon.

(Effective for the period of July 1, 2006 – June 30, 2007; SB 1741, s. 24.3(a), S.L. 06-66.)

G.S. 105-449.88A – Exempt Card or Code: This statute was amended to eliminate the use of exempt access cards at the terminal rack. The excise and/or inspection taxes will be imposed on all motor fuel as it crosses the terminal rack.

(Effective January 1, 2007; HB 1963, s. 14.(b), S.L. 06-162.)

G.S. 105-449.90(c) – No Quarterly Returns: This statute was amended to remove the tax return due dates for quarterly, as there is no longer a quarterly reconciling return filed by the distributors or importers.

(Effective January 1, 2007; HB 1963, s. 14.(c), S.L. 06-162.)

G.S. 105-449.93 – Distributor Exempt Sale Deduction: This statute was amended to eliminate the tax deduction allowed a distributor or importer when purchasing fuel at the terminal and delivering it directly to the exempt entity.

(Effective January 1, 2007; HB 1963, s. 14.(d), S.L. 06-162.)

G.S. 105-449.94 – Repealed: This statute was repealed because there is no longer a quarterly reconciling return to be filed by the distributors or importers.

(Effective January 1, 2007; HB 1963, s. 14.(e), S.L. 06-162.)

G.S. 105-449.97(d) – Conforming: This statute was amended to conform the terminology of exempt card or an exempt access code to exempt card or code. There is no longer an exempt access card or code for use at the terminals.

(Effective January 1, 2007; HB 1963, s. 14.(f), S.L. 06-162.)

G. S. 105-449.100 – Return Due Date: This statute was amended to conform the due date of the terminal operator informational return to a common due date of the 22nd of each month.

(Effective January 1, 2007; HB 1963, s. 15.(a), S.L. 06-162.)

G. S. 105-449.101(a) & (b) – Additional Reporting Requirement: This statute was amended to require all fuel movement, whether interstate or intrastate, to be reported on a monthly informational return. The statutes were further amended to identify additional information required on the tax return due to this change. The due date of the motor fuel transporter informational return was amended to a common due date of the 22nd of each month.

(Effective July 1, 2007; HB 1963, s. 13(b), S.L. 06-162.)

G. S. 105-449.102(a) – Return Due Date: This statute was amended to conform the due date of a distributor's bulk plant exporter return to a common due date of the 22nd of each month.

(Effective January 1, 2007; HB 1963, s. 15.(b), S.L. 06-162.)

G. S. 105-449.105A(a) – Kerosene Refund: This statute was amended to include a refund for a distributor that dispenses kerosene into a storage facility for fueling airplanes only. The storage facility must be marked "Undyed, Untaxed Kerosene, Nontaxable Use Only" or the dispensing device is not suitable for use in fueling a highway vehicle.

(Effective January 1, 2007; HB 1963, s. 14.(g), S.L. 06-162.)

G.S. 105-449.106(c) – Conforming: This statute was amended due to a change in the sales tax statutes during the 2005 legislative session. The change replaces the 1% sales tax with a 1% privilege tax.

(Effective July 24, 2006; HB 1963, s. 16(a), S.L. 06-162.)

G.S. 105-449.107(c) – Conforming: This statute was amended due to a change in the sales tax statutes during the 2005 legislative session. The change replaces the 1% sales tax with a 1% privilege tax.

(Effective July 24, 2006; HB 1963, s. 16(b), S.L. 06-162.)

G.S. 105-449.120(a)(3a) – Repealed: This statute was repealed, as a change in statute during the 2005 Legislative Session made this statute obsolete.

(Effective January 1, 2007; HB 1963, s. 17, S.L. 06-162.)

G.S. 105-449.127 – Repealed: This statute was repealed since all civil penalties must be credited to the Civil Penalties and Forfeiture Fund.

(Effective July 24, 2006; HB 1963, s. 12.(c), S.L. 06-162.)

G. S. 105-449.137(b) – Return Due Date: This statute was amended to conform the due date of the alternative fuels provider tax return to a common due date of the 22nd of each month.

(Effective January 1, 2007; HB 1963, s. 15.(c), S.L. 06-162.)

G. S. 119-18(a) – Conforming Language: This statute was amended to conform the statute reference to G.S. 105-449.90 for the due date of the monthly return.

(Effective January 1, 2007; HB 1963, s. 15.(d), S.L. 06-162.)