2007

NORTH CAROLINA

DEPARTMENT OF REVENUE

TAX LAW CHANGES

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2007 TAX LAW CHANGES

OFFICE OF THE ASSISTANT SECRETARY FOR TAX ADMINISTRATION

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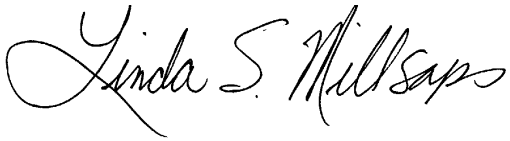
INTRODUCTION

The 2007 legislative session brought many changes to the Revenue laws and the North Carolina Department of Revenue. Most significant to the Department was the passage of SB 242. This legislation made numerous changes to our procedures for assessments and refunds, as well as taxpayers' methods of appeals. These changes impact almost every part of the NCDOR, and significantly impact taxpayer rights, so please take a few moments to review this portion of the document. In addition, we want to alert you that the General Assembly chose to use a number of effective dates for these changes, including altering tax years in the future. These dates are noted in the appropriate portion of the narrative, so please read these fully.

In terms of tax policy changes, the General Assembly permanently extended the 4.25% State sales tax rate, and gave counties the option of enacting an additional sales tax or a land transfer tax. Legislation was also passed to reinforce the State's position on captive real estate investment trusts (REITs) and further clarify the requirements for taking a tax credit for conservation donations to limit abuse of these incentives. A new tax credit was created for biodiesel producers, while the incentive for research and development was enhanced. The General Assembly also chose to create a North Carolina Work Opportunity Tax Credit (WOTC) equal to 6% of the federal WOTC. In a similar move to follow the federal government, the legislature created a State Earned Income Tax Credit (EITC) equal to 3.5% of the federal EITC. (This provision has a delayed effective date). The long-term care tax credit was re-instituted, a tax credit for adoption was created, and special tax treatment was created for software publishers, property coverage contracts, aircraft parts manufacturers and intermodal rail facilities.

These are just a few of the many changes outlined in this 82-page document. I hope you find this helpful over the coming years.



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ESTATE TAX

G.S. 105-32.8 – Federal Determination that Changes the Amount of Tax Payable to the State:

This section was amended to clarify that a person who fails to report a federal correction or determination is subject to the penalties in G.S. 105-236.

(Effective for taxable years beginning on or after January 1, 2007; SB 242, s. 6; S.L. 07-491.)

INDIVIDUAL INCOME TAX

G.S. 105-134.6(c)(5b) – Addition to Federal Taxable Income for Amounts Donated to Nonprofit Organization to Enable the Nonprofit to Acquire Renewable Energy Property:

This subdivision was added to require an addition to federal taxable income for the amount of a donation made to a nonprofit organization for which a credit is claimed under G.S. 105-129.16H. G.S. 105-129.16H provides tax credits to taxpayers who donate money to a tax-exempt nonprofit organization for the purpose of providing funds for the organization to construct, purchase, or lease renewable energy property.

(Effective for tax years beginning on or after January 1, 2008; SB 3, s.13(c); S.L. 07- 397.)

G.S. 105-134.6(d)(4) – Enhance North Carolina National College Savings Program (529 Plan):

The 2006 General Assembly enacted legislation to allow a deduction of up to $750 ($1,500 on a joint return) for amounts contributed to the Parental Savings Trust Fund (North Carolina's 529 Plan). The deduction was effective for tax years beginning on or after January 1, 2006, and was available only if the taxpayer's adjusted gross income was less than the following amount for the taxpayer's filing status (Married, filing jointly - $100,000; Head of household - $80,000; Single - $60,000; Married, filing separately - $50,000). The legislation was subsequently amended by Session Law 2006-221 to increase the maximum deduction for contributions to the Fund to $2,000 ($4,000 on a joint return) effective for tax years beginning on or after January 1, 2007.

The 2007 General Assembly amended this subdivision by removing the adjusted gross income limitations and increasing the maximum deduction for contributions to the Fund to $2,500 ($5,000 on a joint return). Consequently, for tax years beginning on or after January 1, 2007, the deduction is available to any taxpayer who made a qualifying

contribution to the Fund regardless of the amount of the taxpayer's adjusted gross income.

Effective for tax years beginning on or after January 1, 2012, the adjusted gross income limitations are reinstated.

(Effective for taxable years beginning on or after January 1, 2007; HB 1473, ss. 31.19(c) and (d); S.L. 07-323.)

G.S. 105-134.6(d)(6) – Deduction for Voluntary Firefighters and Rescue Squad Workers:

This subdivision was added to allow a $250 deduction to a taxpayer who is an eligible firefighter or an eligible rescue squad worker. In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single tax year.

An eligible firefighter is defined as an unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year. An eligible rescue squad worker is defined as an unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year.

(Effective for taxable years beginning on or after January 1, 2007; HB 1473, s. 31.24(a); S.L. 07-323.)

G.S. 105-151.12 – Credit for Certain Real Property Donations:

This section was amended to limit the application of this section to individuals or pass-through entities and to replace a generic, catch-all phrase, "other similar land conservation purposes," with specific qualifying conservation purposes, including forestland or farmland conservation, watershed protection, conservation of natural areas, conservation of natural or scenic river areas, conservation of predominantly natural parkland, and historic landscape conservation. The statute also requires that in addition to the DENR certification that the type of land qualifies, a self-contained appraisal report or a summary appraisal report must be filed with the income tax return. For fee simple absolute donations of real property, the taxpayer may provide documentation of the county's appraised value of the property, as adjusted by the sales assessment ratio, in lieu of the an appraisal report.

New subsection (a1) was added to clarify that the aggregate amount of credit allowed to an individual for one or more donations in a taxable year is $250,000. In the case of property owned by a married couple filing a joint return, the new subsection increases the maximum credit to $500,000. Previously, the maximum credit allowed to a married couple filing a joint return was $250,000.

Prior to January 1, 2007, the $250,000 cap for individuals claiming a conservation tax credit was not applied to pass-through entities as a whole. Instead, the pass-through entity received tax credits of up to

$250,000 for each owner making a qualifying donation. This provision expired effective for tax years beginning on or after January 1, 2007, so that pass-through entities claiming the conservation credit are limited to a maximum credit of $250,000. However, the 2007 General Assembly added new subsection (a2), which increases the cap for pass-through entities to a maximum credit of $500,000, the same as the amount for corporations. Consequently, each individual owner of a pass-through entity is allowed a credit equal to the owner's allocated share of the credit, not to exceed $250,000. Each corporation that is the owner of a pass-through entity is allowed a credit equal to the owner's allocated share of the credit, not to exceed $500,000.

If an owner's share of a pass-through entity's credit is limited due to the maximum allowable credit for a taxable year, the pass-through and its owners may not reallocate the unused credit among the other owners.

(Effective for taxable years beginning on or after January 1, 2007; HB 463, s. 2, S.L. 07-309.)

G.S. 105-151.28 - Credit for Premiums Paid on Long-Term Care Insurance Reenacted:

This statute, originally enacted in 1998 and repealed for tax years after 2003, was reenacted for tax years beginning on or after January 1, 2007. The statute provides an individual income tax credit to a taxpayer who pays premiums during the taxable year on a qualified long-term care insurance contract that offers coverage to either the individual, the individual's spouse, or a dependent for whom the individual was allowed to deduct a personal exemption on the individual's federal tax return for the taxable year. The credit is equal to 15% of the premium costs but may not exceed $350 for each contract for which the credit is claimed.

As originally enacted in 1998, there were no income limitations with respect to who could claim the credit. However, as reenacted, the long-term care credit is allowed only to a taxpayer whose adjusted gross income is less than the amount shown below for the taxpayer's filing status.

Married, filing jointly - $100,000
Head of household - $80,000
Single - $60,000
Married, filing separately - $50,000

A nonresident or part-year resident is allowed a prorated credit based on the percentage of the taxpayer's total income that is taxable for North Carolina income tax purposes. The credit may not exceed the taxpayer's tax for the year reduced by the sum of all other credits allowed. Any unused portion of the credit may not be carried over to subsequent years. A credit is not allowed for any premiums paid with income that is excluded from gross income or that was deducted in arriving at federal taxable income.

The credit for premiums paid on long-term care insurance is not allowed to an estate or trust.

(Effective for taxable years beginning on or after January 1, 2007, and expires for taxable years beginning on or after January 1, 2013; HB 1473, ss. 31.5(a) and (b); S.L. 07-323.)

G.S. 105-151.31 – Refundable Earned Income Tax Credit (Effective for tax years beginning on or after January 1, 2008):

This section was added to provide a State earned income tax credit to an individual who claims an earned income tax credit under section 32 of the Internal Revenue Code. The credit is 3.5% of the amount of the earned income tax credit the individual qualified for on the federal return.

If the credit exceeds the tax liability reduced by the sum of all credits allowable, the excess is refunded to the taxpayer. Section 3507 of the Internal Revenue Code, Advance Payment of Earned Income Credit, does not apply to the State earned income tax credit.

A nonresident or part-year resident is allowed a prorated credit based on the percentage of the taxpayer's total income that is taxable for North Carolina income tax purposes.

The earned income tax credit is not allowed to an estate or trust.

(Effective for taxable years beginning on or after January 1, 2008, and expires for taxable years beginning on or after January 1, 2013; HB 1473, ss. 31.4(a) and (b); S.L. 07-323.)

G.S. 105-151.32 – Tax Credit for Adoption Expenses:

This section was added to provide an adoption tax credit to an individual who is allowed a federal adoption tax credit under section 23 of the Internal Revenue Code. The credit is 50% of the amount of the federal credit.

A nonresident or part-year resident is allowed a prorated credit based on the percentage of the taxpayer's total income that is taxable for North Carolina income tax purposes. The credit may not exceed the taxpayer's tax for the year reduced by the sum of all other credits allowed. Any unused credit may be carried forward for the next succeeding five years.

The tax credit for adoption expenses is not allowed to an estate or trust.

(Effective for taxable years beginning on or after January 1, 2007, and expires for taxable years beginning on or after January 1, 2013; HB 1473, ss. 31.6(a) and (b); S.L. 07-323.)

G.S. 105-159 – Federal Corrections:

This section was amended to remove language on which the Department relied to make any corrections to a taxpayer's North Carolina income tax return when a federal determination changed the taxpayer's federal taxable income. As amended and specifically stated in G.S. 105-241.10, the Department may assess additional tax that results only from adjustments related to the federal determination. A proposed assessment may not include an amount that is outside the scope of this liability.

(Effective for taxable years beginning on or after January 1, 2007; SB 242, s. 16, S.L. 07-491.)

WITHHOLDING TAX

G.S. 105-163.6A – Federal Corrections:

Previously, if the amount of taxes an employer was required to withhold and pay under the Code was corrected or otherwise determined by the federal government, the employer had two years to file a return reflecting the corrected or determined amount. This section was amended to reduce to six months the time allowed to file a return reflecting the corrected or determined amount. (This change is a technical change and conforms to the changes made last year to other federal corrections statutes.)

The section was also amended to remove language on which the Department relied to make any corrections to an employer's State withholding tax return when a federal determination changed the amount that is required to be withheld and paid under the Code. As amended and specifically stated in G.S. 105-241.10, the Department may assess additional tax that results only from adjustments related to the federal determination. A proposed assessment may not include an amount that is outside the scope of this liability.

(Effective for taxable years beginning on or after January 1, 2007; SB 242, s. 17, S.L. 07-491.)

G.S. 105-163.9 – Conforming Change:

This section was amended to delete the references to repealed G.S. 105-266 and replace them with references to new G.S. 105-241.6 and 105-241.21.

(Effective for taxable years beginning on or after January 1, 2007; SB 242, s. 18, S.L. 07-491.)

GIFT TAX

G.S. 105-197.1 – Federal Corrections:

The section was amended to remove language on which the Department relied to make any corrections to a taxpayer's net gifts when a federal determination changed the net gifts. As amended and specifically stated in G.S. 105-241.10, the Department may assess additional tax that results only from adjustments related to the federal

determination. A proposed assessment may not include an amount that is outside the scope of this liability.

(Effective for taxable years beginning on or after January 1, 2007; SB 242, s. 22, S.L. 07-491.)

TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS

G.S. 105-163.011(c) – Application Process:

Under prior law, the date for filing a credit application was April 15 of the year following the calendar year in which the investment was made. However, a taxpayer could extend the deadline to September 15 by filing a written request for extension by April 15. An application not filed by April 15, or by September 15 with a valid extension, was not accepted.

Under the new law, the extension provisions have been repealed. The date by which an application should be filed remains April 15. However, an application will be considered timely if filed by October 15 of the year following the calendar year in which the investment was made. An application filed after October 15 will not be accepted.

(Effective January 1, 2008 and applies to applications filed on or after that date; HB 1598, s. 2, S.L. 07-422.)

G.S. 105-163.015 – Sunset Extended:

The credit for qualified business investments was scheduled to sunset for investments made on or after January 1, 2008. The credit now sunsets for investments made on or after January 1, 2011.

(Effective August 23, 2007; HB 1598, s. 1, S.L. 07-422.)

GROSS RECEIPTS AMUSEMENT TAX

G.S. 105-40(7a) – Clarifying Change:

This subsection was amended to clarify that a "nonprofit arts organization", exempt from the gross receipts tax on amusements, is one that is exempt from income tax under G.S. 105-130.11(a)(3) and is primarily organized to offer choral and theatrical performances.

(Effective August 31, 2007; SB 540, s. 2, S.L. 07-527.)

G.S. 105-40(10) – Clarifying Change:

This subsection was amended to clarify that the duration of a single arts festival is limited to seven consecutive days. Without the clarification, a person could hold an event every weekend for three weeks and call it one festival, circumventing the provision in the statute that limits the number of arts festivals per year to two.

(Effective August 31, 2007; SB 540, s. 3.(a), S.L. 07-527.)

G.S. 105-40(11) – Clarifying Change:

This subsection was amended to clarify that the duration of a single community festival is limited to seven consecutive days. Without the clarification, a person could hold an event every weekend for three weeks and call it one festival, circumventing the provision in the statute that limits the number of community festivals per year to one.

(Effective August 31, 2007; SB 540, s. 3.(b), S.L. 07-527.)

PRIVILEGE TAXES

G.S. 105-104 – Repealed:

This statute, which addressed the manner of obtaining a privilege license from the Department, was repealed. The statutory process to obtain a license was added to G.S. 105-109(b).

(Effective January 1, 2008; SB 242, s. 2, S.L. 07-491.)

G.S. 105-109(b) – Process to Obtain a Privilege License:

This subsection was amended to include the statutory process for obtaining a privilege license that had previously been addressed in repealed G.S. 105-104. To obtain a license, a person must submit an application for the license and payment of the required tax to the Department. An application for a license is considered a return. Upon receipt of the completed application and payment, the Department must issue the license.

(Effective January 1, 2008; SB 242, s. 7, S.L. 07-491.)

TOBACCO PRODUCTS TAX

Chapter 58, Article 92 – Fire Safe Cigarettes:

This new article adopts a cigarette fire safety standard already implemented in New York and other states as a safety measure to reduce the likelihood that cigarettes will cause fires and result in deaths, injuries, and property damage. The manufacturer must test cigarettes and file a certification with the Department of Insurance that the cigarettes meet the safety standards. Each package must be marked to indicate compliance with the safety act. Inventory on hand is exempt from the marking requirement. However, the retailer or wholesaler must have documentation to confirm that the cigarettes were purchased prior to the effective date and that the quantity purchased was comparable to the cigarettes purchased during the same period of the prior year. The act requires distributors, agents, and retail dealers to submit to inspection of the products by the Commissioner of Insurance, the Secretary of Revenue, or the Attorney General, and their employees. The act allows for seizure of cigarettes in violation of this act by any law enforcement personnel or duly authorized representative of the Commissioner of Insurance. Seized contraband is to be turned over to the Department of Revenue for destruction after the manufacturer is given the opportunity to inspect the cigarettes.

(Effective January 1, 2010; HB 1785, s. 1, S.L. 07-451.)

G.S. 105-113.35 – Tax on Tobacco Products Other Than Cigarettes; Use of Proceeds:

This section was amended to increase the tax rate on other tobacco products (OTP) from 3% of the cost price of products to 10%. The 7% increase is to be credited to the newly established University Cancer Research Fund. A wholesale or retail dealer of OTP who has inventory on hand on the effective date of the tax rate increase is subject to the additional "floor" tax on those products. The additional tax must be reported within 20 days after the date of the increase.

(Tax rate increase effective October 1, 2007; HB 1473, s. 6.23(a), floor tax provisions; s. 6.23(d), S.L. 07-323.)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES

G.S. 105-113.82(a) – Clarifying Change:

Statutorily determined percentages of the excise taxes collected on malt beverages, fortified and unfortified wines are distributed annually to qualifying local governments. This subsection was amended to clarify that the term "net amount", the amount to which the percentages are applied, means gross collections minus refunds and amounts credited to the Department of Commerce for the North Carolina Wine and Grape Growers Council.

(Effective August 31, 2007; SB 540, s. 4, S.L. 07-527.)

FRANCHISE TAX

G.S. 105-116(b) – Time for Paying Tax by Electric Power Companies:

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.

(Effective October 1, 2007; HB 1915, s. 10, S.L. 06-33.)

G.S. 105-122(a) – Due Date:

This subdivision was amended to change the due date of franchise tax returns that are filed on an annual basis to the 15th day of the fourth month following the end of the corporation's income year.

(Effective January 1, 2008; SB 242, s. 10, S.L. 07-491. ***Note:*** *This change conforms to the change in the due date for corporate*

income tax returns in G.S. 130.17(b), which is effective for taxable years beginning on or after January 1, 2008. The annual franchise tax return and the corporate income tax return are filed by a taxpayer on the same tax form; therefore, the due date of those two tax returns must be the same. The Department is proceeding under the belief that the effective date of the change to the due date for the franchise tax return is a technical error. The Department will recommend that the technical error be corrected by the 2008 session of the General Assembly. Franchise tax returns and corporate income tax returns filed in 2008 will be due on the 15th day of the third month following the end of the corporation's income year.)

G.S. 105-122(c) – Authority for a Taxpayer to Petition the Augmented Tax Review Board to Consider an Alternative Method of Apportionment Repealed:

This subdivision was repealed to conform to the repeal of the statute authorizing the Tax Review Board.

(Effective January 1, 2008; SB 242, s. 2, S.L. 07-491.)

G.S. 105-122(c1)(2) – Alternative Apportionment:

This subdivision was amended to grant the Secretary of Revenue authority to approve an alternative method of apportionment if the taxpayer establishes by clear and cogent evidence that the statutory formula operates to subject a greater portion of the capital stock base to tax than is attributable to its business in the State. This authority was formerly under the purview of the Augmented Tax Review Board. If granted, the order can apply to no more than three years. If denied, the Secretary's decision is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative formula may apportion its capital stock base in accordance with the alternative method or the statutory method.

(Effective January 1, 2008; SB 242, s. 11, S.L. 07-491.)

G.S. 105-122.1 – Credit for Additional Annual Report Fees Paid by Limited Liability Companies Subject to Franchise Tax:

This subsection was amended to make a conforming change to a cross-reference to the statute that sets the corporation annual report fee. G.S. 55-1-22(a) was amended to add a subsection to impose an $18 fee for electronically filed annual reports. The traditional paper report fee is increased to $25. The allowable credit is the difference between the annual report fee the limited liability company has to pay and the annual report fee that a corporation pays if it files a paper report.

(Statutory reference effective for taxable years beginning on or after January 1, 2007; HB 1473, s. 30.6(b), S.L. 07-323.)

TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES

G.S. 105-129.2A(a)- Technical Change:

This section was amended to clarify that Article 3A is repealed for activities that occur in taxable years beginning on or after January 1, 2007.

(Effective August 30, 2007; HB 1595, s. 5, S.L. 07-515.)

G.S. 105-129.2A(d) – Report:

This subsection was amended to set June 1, 2007 as the date for the Department of Commerce to issue its final impact study report regarding the Article 3A credits.

(Effective August 30, 2007; HB 1595, s. 4, S.L. 07-515.)

BUSINESS AND ENERGY TAX CREDITS

G.S. 105-129.16D(b1) – Credit for Constructing Renewable Fuel Facilities:

Under prior law, a taxpayer who, after initially qualifying for the alternative production credit, failed to meet the requirements for that section forfeited the entire credit even if the taxpayer qualified for the lesser production credit. This section was amended to permit the taxpayer to limit the forfeiture of the alternative production credit to the amount claimed in excess of the credit that could be claimed under the standard production credit. The taxpayer is liable for taxes avoided as a result of the alternative credit. Tax and interest are due within 30 days after the forfeiture.

(Effective January 1, 2007; HB 1473, s. 31.9, S.L. 07-323.)

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. 105-129.16E(b) – Technical Change:

This subsection was amended to replace the term "business" with the term "apportionable" when referring to "business income." This conforms to the change in the definition of "business income" enacted by the 2002 General Assembly.

(Effective August 31, 2007; SB 540, s. 5, S.L. 07-527.)

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.)

G.S. 105-129.16G – New Work Opportunity Tax Credit:

This section was added to Article 3B to permit a taxpayer who is allowed a federal work opportunity tax credit under Part IV, Subpart F of the Internal Revenue Code to take a credit against its North Carolina income or franchise tax equal to 6% of the federal credit amount.

(Effective January 1, 2007; HB 1473, s. 31.21, S.L. 07-323.)

G.S. 105-129.16H – Credit for Donations to a Nonprofit Organization for Acquisition of Renewable Energy Property:

This section was added to Article 3B to allow a credit to a taxpayer who donates money to a tax-exempt nonprofit organization to construct, purchase, or lease renewable energy property. The amount of the credit is the taxpayer's proportionate share of the credit the nonprofit could have taken under G.S. 105-129.16A if the nonprofit were subject to tax. The taxpayer must take the credit in the year the property is placed in service. The installment requirements for nonresidential property in G.S. 105-129.16A do not apply. The nonprofit organization must provide each taxpayer who made a donation a statement describing the property, setting out the cost of the property, the amount of the credit the organization could claim if it were subject to tax, and the taxpayer's share of the credit. A taxpayer claiming a credit under this section may not deduct this donation as a charitable contribution.

(Effective for taxable years beginning on or after January 1, 2008; SB 3, s. 13(a), S.L. 07-397.)

***Note**: Two new tax credits were enacted as G.S. 105-129.16G. The Reviser of the Statutes has advised the Department that the credit for donations to a nonprofit organization for acquisition of renewable energy property will be codified as G.S. 105-129.16H.*

HISTORIC REHABILITATION TAX CREDITS

G.S. 105-129.35(b) – Allocation:

This section was amended to remove the 2008 sunset on the pass-through entity special allocation provisions, thereby making those provisions permanent.

(Effective August 28, 2007; HB 1259, s. 1, S.L. 07-461.)

RESEARCH AND DEVELOPMENT

G.S. 105-129.55 – Credit for North Carolina Research and Development:

This section was amended to enhance the credit for qualified North Carolina research expenses by increasing the percentage used to determine the credit amount. The percentage for small business and tier-one research was increased from 3% to 3.25%. For other research, the percentage for expenses up to $50 million increased from 1% to 1.25%; for expenses from $50 million to $200 million, the percentage increased from 2% to 2.25%; and for expenses over $200 million, the percentage increased from 3% to 3.25%. The

percentage for North Carolina university research expenses increased from 15% to 20%.

(Effective for taxable years beginning January 1, 2007; HB 1473, s. 31.8, S.L. 07-323.)

TAX CREDITS FOR GROWING BUSINESSES

New Article 3J – 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 3J.

Subdivision (1) defines "agrarian growth zone" by cross-reference to the definition of that term in G.S. 143B-437.10. The 2007 General Assembly made a technical change to correct the statutory reference. The correct reference is G.S. 143B-437.010.

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:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.
b. Software publishers industry group 5112 as defined by NAICS.
c. 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:

1. aircraft maintenance and repair.
2. air courier services hub.
3. company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
4. customer service call centers.
5. electronic shopping and mail order houses.
6. information technology and services.
7. manufacturing.
8. motorsports facility.
9. motorsports racing team.
10. research and development.
11. warehousing.
12. 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:

a. The number and amount of credits generated and taken for each credit allowed in this Article.
b. The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.
c. The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.
d. 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 (b) was revised during the 2007 session of the General Assembly to make a technical change. Language was added to clarify that new jobs created in an urban progress zone or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of 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 (c) was revised during the 2007 session of the General Assembly to make a technical change. Language was added to clarify that business property placed in service in an urban progress zone or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county.

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 a 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 original 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 subsection was revised during the 2007 session of the General Assembly to correct this technical error.

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 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; technical change to G.S.105-129.81 (1) effective July 1, 2007; SB 613, s. 33, S.L. 07-484; technical changes to G.S.105-129.87(b), G.S.105-129.88(c) and (e) effective August 31, 2007; SB 540, ss. 6-8, S.L. 07-527.)

TAX INCENTIVES FOR RAILROAD INTERMODAL FACILITY

New Article 3K - Tax Incentives for Railroad Intermodal Facilities:

This new Article was enacted to provide an income or franchise tax credit to a person who constructs or leases a railroad intermodal facility in North Carolina.

G.S. 105-129.95 – Definitions:

This section sets out the definitions that apply to Article 3K.

Subdivision (1) defines “costs of construction” as “the costs of acquiring and improving land, constructing buildings and other structures, and equipping the facility. In the case of property owned or leased by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code.” A technical correction was subsequently made to expand the definition to include the costs of “constructing and equipping rail tracks to the railroad intermodal facility that are necessary to access and support facility operations.”

Subdivision (2) defines "Eligible railroad intermodal facility" as "a railroad intermodal facility whose costs of construction exceed thirty million dollars."

Subdivision (3) defines "Intermodal facility" as "a facility where freight is transferred from one mode of transportation to another."

Subdivision (4) defines "Railroad intermodal facility" as "an intermodal facility whose primary purpose is to transfer freight between a railroad and another mode of transportation."

G.S. 105-129.96 – Credit for Constructing a Railroad Intermodal Facility:

The credit is equal to 50% of amounts paid by the taxpayer towards the costs of construction or under the lease for a railroad intermodal facility placed in service during the taxable year. The taxpayer elects the tax to which the credit will be applied when filing the return on which the credit is claimed. The election is binding. The credit is limited to 50% of the tax liability. Any unused portion may be carried forward for ten years.

G.S. 105-129.97 – Substantiation:

This section mandates that the taxpayer maintain adequate records to substantiate the credit and must provide supporting documentation upon request by the Department.

G.S. 105-129.98 – Reports:

This section requires the Department to publish by May 1 each year the number of taxpayers claiming the Article 3K credit, the amount of the credit and to which tax it was applied, and the total cost to the General Fund.

G.S. 105-129.99 – Sunset:

This section repeals Article 3K for taxable years beginning on or after January 1, 2038.

(Effective for taxable years beginning on or after January 1, 2007 and applies to eligible railroad intermodal facilities placed in service on or after that date; HB 1473, s. 31.23(a), S.L. 07-323. Technical correction to G.S. 105-129.95(1) effective January 1, 2007; HB 714, s. 14.7(a), S.L. 07-345.)

CORPORATION INCOME TAX

G.S. 105-130.4(t) – Authority for a Taxpayer to Petition the Augmented Tax Review Board to Consider an Alternative Method of Apportionment Repealed:

This subdivision was repealed to conform to the repeal of the statute authorizing the Tax Review Board.

(Effective January 1, 2008; SB 242, s. 2, S.L. 07-491.)

G.S. 105-130.4(t1) – Alternative Apportionment:

This subdivision was added to grant the Secretary of Revenue authority to approve an alternative method of apportionment if the taxpayer establishes by clear and cogent evidence that the statutory formula operates to subject a greater portion of the corporation's income to tax than is attributable to its business in the State. This authority was formerly under the purview of the Augmented Tax Review Board. If granted, the order can apply to no more than three years. If denied, the Secretary's decision is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative formula may apportion its capital stock base in accordance with the alternative method or the statutory method.

(Effective January 1, 2008; SB 242, s. 12, S.L. 07-491.)

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. 105-130.5(a)(19) – Addition for Dividends Paid by a Captive REIT:

This subdivision was added to require the addition to federal taxable income of the dividend paid deduction allowed to a captive Real Estate Investment Trust. A captive REIT is defined in G.S. 105-130.12.

(Effective for taxable years beginning on or after January 1, 2007; HB 1473, s. 31.18(a), S.L. 07-323.)

G.S. 105-130.5(a)(20) – Addition for Donation to Nonprofit for Renewable Energy Property:

This subdivision was added to require a taxpayer who claimed a tax credit under G.S. 105-129.16H for a donation to a nonprofit organization for acquisition or lease of renewable energy property to make an addition to federal taxable income for the amount of the donation.

(Effective for taxable years beginning on or after January 1, 2008; SB 3, s. 13(b), S.L. 07-397.)

***Note**: Two new additions to federal taxable income were enacted as G.S. 105-130.5(a)(19). The Reviser of the Statutes has advised the Department that the addition for the amount of the donation to a nonprofit organization for acquisition or lease of renewable energy property for which a tax credit is claimed under G.S. 105-129.16H will be codified as G.S. 105-130.5(a)(20).*

G.S. 105-130.5(b)(17) – Conforming Change:

This subdivision was amended to conform to changes made to Chapter 62A regarding 911 charges remitted to the 911 Fund.

(Effective January 1, 2008; HB 1755, s. 5, S.L. 07-383.)

G.S. 105-130.5(b)(23) – Subtraction for Dividends Received from a Captive REIT:

This subdivision was added to permit the subtraction from federal taxable income of a dividend received from a captive Real Estate Investment Trust. A captive REIT is defined in G.S. 105-130.12.

(Effective for taxable years beginning on or after January 1, 2007; HB 1473, s. 31.18(b), S.L. 07-323.)

G.S. 105-130.6A(e) – Conforming Changes:

This subsection was amended to change two references to G.S. 105-241.1, which has been repealed effective January 1, 2008.

(Effective January 1, 2008; SB 242, s. 13, S.L. 07-491.)

G.S. 105-130.12 – Captive REIT:

The amendment to this section, along with the enactment of G.S. 105-130.5(a)(19) and G.S. 105-130.5(b)(23), create an alternative to existing statutory authority to address a corporation's attempt to avoid state taxes through the use of a real estate investment trust. A captive REIT is defined as one whose shares or certificates of beneficial interest is not regularly traded on an established securities market and are more than 50% owned or controlled by a person subject to NC corporate income tax. REITs owned by other REITs or listed Australian property trusts are excluded from the definition of captive REIT. The captive REIT is required to add back the dividends paid deduction. The recipient of a dividend from the captive REIT will deduct the dividend received.

(Effective for taxable years beginning on or after January 1, 2007; HB 1473, s. 31.18(c), S.L. 07-323.)

G.S. 105-130.17(b) - Due Date:

This subdivision was amended to change the due date of the income tax return to the 15th day of the fourth month following the end of the corporation's income year.

(Effective for taxable years beginning on or after January 1, 2008; SB 242, s. 14, S.L. 07-491.)

G.S. 105-130.20 – Federal Corrections:

This section was amended to remove language on which the Department relied to make any corrections to a taxpayer's North Carolina income tax return when a federal determination changed the taxpayer's federal taxable income. As amended and specifically stated in G.S. 105-241.10, the Department may only assess additional tax that results from adjustments related to the federal determination if the taxpayer timely reports the federal determination to the Department. A proposed assessment may not include an amount that is outside the scope of this liability.

(Effective for taxable years beginning on or after January 1, 2007; SB 242, s.15, S.L. 07-491.)

G.S. 105-130.34 - Conservation Tax Credit Modifications:

This section was amended to limit the application of this section to C Corporations and to replace a generic, catch-all phrase, "other similar land conservation purposes," with specific qualifying

conservation purposes, including forestland or farmland conservation, watershed protection, conservation of natural areas, conservation of natural or scenic river areas, conservation of predominantly natural parkland, and historic landscape conservation. The statute also requires that in addition to the DENR certification that the type of land qualifies, a self-contained appraisal report or a summary appraisal report must be filed with the income tax return. For fee simple absolute donations of real property, the taxpayer may provide documentation of the county's appraised value of the property, as adjusted by the sales assessment ratio, in lieu of the an appraisal report.

(Effective for taxable years beginning on or after January 1, 2007, HB 463, s.1, S.L. 07-309.)

G.S. 105-130.41(c1)(2) – Technical Change:

This subdivision regarding the Department's reporting requirements with regard to the credit for North Carolina State Ports Authority wharfage, handling, and throughput charges was amended to clarify that the amount to be reported is the total amount of charges assessed for the taxable year.

(Effective August 31, 2007; SB 540, s. 26.(a), S.L. 07-527.)

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(e) – Technical Change:

This subsection was amended to require that a taxpayer claiming the credit for recycling oyster shells provide with its income tax return certification by the Department of Environment and Natural Resources only upon request. Under prior law, submission of the certification was mandatory.

(Effective August 31, 2007; SB 540, s. 9.(a), S.L. 07-X527.)

PIPED NATURAL GAS TAX

G.S. 105-187.41 – Tax Imposed on Piped Natural Gas:

This section was amended to phase out the excise tax on piped natural gas received by a manufacturer for use in connection with the operation of a manufacturing facility or by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes. To qualify, a person must have a manufacturer's certificate or a farmer's certificate issued under G.S. 105-164.28A.

The following rates per therm apply to piped natural gas received by a manufacturer or farmer for the purposes stated above for bills issued on or after October 1, 2007 and before July 1, 2008:

Up to 200	$.032
201 to 15,000	.024
15,001 to 60,000	.016
60,001 to 500,000	.010
Over 500,000	.002

The following rates per therm apply to piped natural gas received by a manufacturer or farmer for the purposes stated above for bills issued on or after July 1, 2008 and before July 1, 2009:

Up to 200	$.025
201 to 15,000	.019
15,001 to 60,000	.013
60,001 to 500,000	.008
Over 500,000	.002

The following rates per therm apply to piped natural gas received by a manufacturer or farmer for the purposes stated above for bills issued on or after July 1, 2009 and before July 1, 2010:

Up to 200	$.014
201 to 15,000	.010
15,001 to 60,000	.007
60,001 to 500,000	.004
Over 500,000	.001

The excise tax reduced rates are replaced with an exemption from the excise tax on piped natural gas for manufacturers and farmers for the purposes stated above for bills issued on or after July 1, 2010.

(Reduced rates effective as explained above; full exemption effective for bills issued on or after July 1, 2010; SB 3, s. 11, S.L. 07-397.)

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 2007 calendar year. This charge is a percentage of gross premiums tax liability.

(Effective July 31, 2007; HB 1473, s. 31.12, S.L. 07-323.)

G.S. 58-6-25(a) – Conforming Change:

This subsection was amended to conform to the repeal of the preferential tax rate for HMOs (see G.S. 105-228.5(d)(6) below).

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

G.S. 105-228.5(d)(3) – Adjustment to the Rate of the Additional Gross Premiums Tax on Property Coverage Contracts:

The 2006 Legislature repealed the additional State and local fire and lightning taxes and replaced them with an additional tax on property coverage contracts with no reference to fire and lightning coverage. The rate of the new tax was set at 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). The new tax was effective for taxable years beginning on or after January 1, 2008.

The 2007 Legislature further considered these changes and reduced the tax rate from 0.85% to 0.74%.

(Repeal of State and local taxes and enactment of new tax on property coverage contracts effective for taxable years beginning on or after January 1, 2008; HB 1891, s. 3; S.L. 06-196; reduced rate of new tax also effective for taxable years beginning on or after January 1, 2008; SB 238, s. 1, S.L. 07-250.)

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

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

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

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

G.S. 105-228.5(f) – Conforming Changes:

This subdivision was amended to change the references regarding interest on underpayments or overpayments from G.S. 105-241.1 and G.S. 105-266, which have been repealed, to G.S. 105-241.21, which has been enacted in their place.

(Effective January 1, 2008; SB 242, s. 23, S.L. 07-491.)

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:

Bundled transaction – (1b). This definition was added in order for North Carolina to remain in compliance with the provisions of the Streamlined Sales and Use Tax Agreement. The term is defined as "a retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).

b. Two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.

c. A product accompanied by a transfer of another product with no additional consideration.

d. A product and the delivery or installation of the product.

e. A product and any service necessary to complete the sale."

(Effective October 1, 2007; HB 257, s. 1, S.L. 07-244.)

Business – (1a). *This definition was recodified as (1d).*

(Effective October 1, 2007; HB 257, s. 1, S.L. 07-244.)

Cable Service – (1b). *This definition was recodified as (1f).*

(Effective October 1, 2007; HB 257, s. 1, S.L. 07-244.)

Eligible railroad intermodal facility – (8f). This definition was added as a result of a new exemption for sales of certain items to the owner or lessee of one of these facilities and a refund authorized for taxes paid on certain purchases by the owner or lessee. It refers to the definition in G.S. 105-129.95, which provides that the term means "a railroad intermodal facility whose costs of construction exceed thirty million dollars ($30,000,000). The term "railroad intermodal facility" is defined as "an intermodal facility whose primary purpose is to transfer freight between a railroad and another mode of transportation."

(Effective January 1, 2007 for sales made on or after that date; HB 1473, s. 31.23(b), S.L. 07-323.)

Gross sales – (12). This definition was rewritten to clarify that the term applies to services as well as tangible personal property. The term is defined as "the sum total of the sales price of all retail sales of tangible personal property and services." There is no substantive change.

(Effective October 1, 2007; HB 257, s. 1, S.L. 07-244.)

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.)

Analytical services – (33a). This definition was added as a result of refunds authorized for a taxpayer engaged in analytical services. The term is defined as "testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS."

(Effective July 31, 2007; HB 1473, s. 31.20(a), S.L. 07-323.)

Sales price – (37). This definition was rewritten to conform to the definition as set out in the Streamlined Sales and Use Tax Agreement. The provision stipulating that the value of exempt personal property given to the consumer when taxable and exempt personal property are bundled together and sold by the retailer as a single product or piece of merchandise is included in the term

"sales price" was deleted; the provision is addressed in the new definition of "bundled transaction" and related tax application statute. A provision for including certain discounts in the term "sales price" was added and codifies the current treatment of discounts for sales and use tax purposes. Included in the term, as rewritten, are "Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:

1. Presentation by the consumer of a coupon or other documentation.
2. Identification of the consumer as a member of a group eligible for a discount.
3. The invoice the retailer gives the consumer."

Stylistic changes were made to the language pertaining to discounts that are not included in the term "sales price;" the treatment of these discounts for tax purposes is unchanged.

(Effective October 1, 2007; HB 257, s. 1, S.L. 07-244.)

School instructional material – (37b). This definition was added as a result of a change in the sales tax holiday. "School instructional material" is "defined in the Streamlined Agreement." The Streamlined Agreement defines the term as "written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms 'school supply,' 'school art supply,' and 'school computer supply…'" The following is an all-inclusive list of items considered to be school instructional materials: reference books, reference maps and globes, textbooks, and workbooks. Prior to this change, the term "school instructional material" was included in the term "school supply."

(Effective October 1, 2007 for sales made on or after that date; HB 1473, s. 31.14(a), S.L. 07-323.)

School supply – (37d). This definition was rewritten and recodified as a result of the addition of the definition for "school instructional material." As amended, the definition no longer includes items considered to be "school instructional materials."

(Effective October 1, 2007 for sales made on or after that date; HB 1473, s. 31.14(b), S.L. 07-323.)

Streamlined Agreement – (45a). This definition was amended to reflect June 23, 2007 as the most recent date of amendments to the Agreement.

(Effective October 1, 2007; HB 257, s. 1, S.L. 07-244.)

G.S. 105-164.4(a) – Maintain State Sales Tax Rate:

The additional ¼% State general sales and use tax, which was scheduled to be repealed for sales made on or after July 1, 2007, was extended for one month pending resolution of the 2007 Appropriations Act. The legislation provides that, for the month of July 2007, a retailer who made a good faith effort to comply with the law and collect the proper amount of tax will not be held liable for an over-collection or under-collection of sales tax as a result of the extension of the ¼% State tax. Additional legislation was enacted that permanently extended the ¼% tax; additional legislation also contained the "hold-harmless" provision for retailers for the month of August 2007.

As a result of the permanent extension of the additional ¼% State general tax, the combined general rate of tax that applies only to sales of telecommunications service, ancillary service, video programming (including cable and direct-to-home satellite service), and spirituous liquor remains at 6.75%.

(Temporary one-month extension and hold-harmless provision for retailers for the month of July effective June 29, 2007; HB 2044, ss. 9(a) and 9(b), S.L. 07-145. Permanent extension effective July 31, 2007; HB 1473, ss. 31.2(a) and 31.2(b), S.L. 07-323. Hold-harmless provision for retailers for the month of August effective August 6, 2007; HB 714, s. 14.9(a), S.L. 07-345.)

G.S. 105-164.4(a) – Increase in State Sales Tax Rate:

The State general rate of tax increases from 4.25% to 4.5%. This occurs simultaneously with the reduction in the local sales tax under Article 44 from one-half to one-quarter percent.

(Effective October 1, 2008 for sales occurring on or after that date; H.B. 1473, s. 31.16.3(h), S.L. 07-323. The State general rate further increases from 4.5% to 4.75% simultaneously with the repeal of the one-quarter percent tax under Article 44; effective October 1, 2009 for sales occurring on or after that date; H.B. 1473, s. 31.16.4(g), S.L. 07-323.)

G.S. 105-164.4(a)(1f)b. – Tax on Electricity Sold to Manufacturers:

This sub-subdivision, which levies a State sales 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)(1f) – Reduced Rate on Electricity:

This subdivision was rewritten to delete the provision for electricity sold to farmers; the sales tax on sales of electricity to farmers is imposed in new subdivision (1j). As rewritten, this subdivision imposes the tax on certain sales of electricity to a commercial laundry or a pressing and dry-cleaning establishment which is the current application.

(Effective October 1, 2007 for sales occurring on or after that date; SB 3, s. 10(b), S.L. 07-397.)

G.S. 105-164.4(a)(1i) – Tax on Electricity Sold to Manufacturers:

This subdivision imposes 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%.

Legislation enacted by the 2007 General Assembly repealed this subdivision as a result of a reduction in the tax rate. The reduced rate of tax is imposed in new subdivision (1j).

(Effective July 1, 2007 for sales made on or after that date; SB 1741, s. 24.19(b), S.L. 06-66. Repeal effective October 1, 2007 for sales occurring on or after that date; SB 3, s. 10(a), S.L. 07-397.)

G.S. 105-164.4(a)(1j) – Tax on Electricity Sold to Manufacturers and Farmers:

This new subdivision imposes a State sales tax at the rate of 1.8% on sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants and to farmers to be used by them for any farming purposes other than preparing food, heating dwellings, and other household purposes. The electricity must be measured by a separate meter or another separate device.

(Effective October 1, 2007 for sales occurring on or after that date; SB 3, s. 10(c), S.L. 07-397. The rate is reduced from 1.8% to 1.4%; effective July 1, 2008 for sales occurring on or after that date; SB 3, s. 10(d), S.L. 07-397. The rate is further reduced from 1.4% to 0.8%; effective July 1, 2009 for sales occurring on or after that date; SB 3, s. 10(e), S.L. 07-397. The subdivision is repealed and sales of electricity to manufacturers and farmers are exempt from tax; effective July 1, 2010 for sales occurring on or after that date; SB 3, s. 10(f), S.L. 07-397.)

G.S. 105-164.4D – Bundled Transactions:

This section was rewritten to incorporate provisions of the Streamlined Sales and Use Tax Agreement. New subsection (a) provides that a "bundled transaction" is subject to sales and use tax unless one of the following applies:

(1) Fifty percent (50%) test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:

a. Food exempt under G.S. 105-164.13B.
b. A drug exempt under G.S. 105-164.13(13).

c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).

(2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.

(3) Ten percent (10%) test. – The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in this subsection applies.

New subsection (b) provides that, in determining if a bundled transaction meets the 50% test or the 10% test, the retailer may use either his cost price or his sales price; he may not use a combination of cost price and sales price. In addition, if a bundled transaction subject to the 10% test includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold.

(Effective October 1, 2007; HB 257, s. 2, S.L. 07-244.)

G.S. 105-164.12B – Tangible Personal Property Sold Below Cost with Conditional Service Contract:

The catch line of this section was renamed to distinguish it from the provisions for "bundled transactions." A transaction previously referred to as a "bundled transaction" is now referred to as a "conditional service contract." As rewritten, the term "service provider" is replaced with "seller." Other editorial changes were made, primarily to modernize the language. A technical change was made to correct references to services subject to the "combined general rate" rather than the "combined State and local general rate." There were no substantive changes.

(Effective October 1, 2007; HB 257, s. 3, S.L. 07-244.)

G.S. 105-164.13 – Exemptions and Exclusions:

The 2007 General Assembly added several new exemptions and revised some of the existing exemptions. The changes and their effective dates are as follows:

Baler twine – (1). The exemption for sales of specific items to a farmer for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals was expanded to add baler twine.

(Effective October 1, 2007; HB 487, s. 1, S.L. 07-500.)

Fuel sold to farmers – (1). This exemption for sales of specific items to a farmer for use by the farmer in the planting, cultivating,

harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals was rewritten to remove the reference to "electricity" in the phrase "fuel other than electricity." The sales tax on electricity will be phased out.

(Effective July 1, 2010 for sales occurring on or after that date; SB 3, s. 10(g), S.L. 07-397.)

Electricity sold to farmers – (1b). This is a new exemption for electricity sold to a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes.

(Effective July 1, 2010 for sales occurring on or after that date; SB 3, s. 10(h), S.L. 07-397.)

Commercial fishing exemption – (9). The exemption for sales of boats and other items to persons for use in commercial fishing operations was rewritten. As rewritten, the exemption applies to a holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use in commercial fishing operations and to a holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations. The exemption also codifies the current practice of allowing the exemption for an operator of a for-hire boat, as defined in G.S. 113-174, for principal use in the commercial use of the boat.

(Effective October 1, 2007; HB 257, s. 4, S.L. 07-244.)

Bread sold at a bakery thrift store – (27a). This is a new exemption from the State sales and use tax for sales of bread, rolls, and buns at a bakery thrift store. These items continue to be subject to the 2% local sales and use tax applicable to sales of qualifying food. For purposes of the exemption, a "bakery thrift store" is defined as a "a retail outlet of a bakery that sells at wholesale over ninety percent (90%) of the items it makes and sells at the retail outlet day-old bread, rolls, and buns returned to it by retailers that acquired these items from the bakery."

(Effective October 1, 2007; SB 1240, ss. 1 and 2, S.L. 07-368.)

Food purchased under food stamp program – (38). This exemption was rewritten to make a technical change to reflect the correct federal code for the Food Stamp Program. Additional legislation renamed the Food Stamp Program to reflect the use of electronic benefit transfer cards. The new name of the program is "Food and Nutrition Services."

(Effective August 31, 2007; SB 540, s. 27, S.L. 07-527. Name change effective June 20, 2007; SB 836, s. 9, S.L. 07-97.)

Sales to State agencies – (52). This exemption was rewritten to add "ancillary service" to the list of items that are not included and are therefore subject to tax.

(Effective August 31, 2007; SB 540, s. 10, S.L. 07-527.)

Items used at eligible railroad intermodal facility – (56). This is a new exemption for sales to the owner or lessee of an eligible railroad intermodal facility of intermodal cranes, intermodal hostler trucks, and railroad locomotives that reside on the premises of the facility and are used at the facility.

(Effective January 1, 2007 for sales made on or after that date; HB 1473, s. 31.23(c), S.L. 07-323.)

Fuel and electricity sold to manufacturers – (56). This is a new exemption for fuel and electricity sold to a manufacturer for use in connection with the operation of a manufacturing facility.

(Effective July 1, 2010 for sales occurring on or after that date; SB 3, s. 10(h), S.L. 07-397.)

***Note:** The legislation providing exemptions for items used at eligible railroad intermodal facilities and for fuel and electricity sold to manufacturers designated both provisions as (56). The codifier of the Statutes will need to change the designation of one of the exemptions.*

G.S. 105-164.13C(a) – Change in Sales Tax Holiday:

This subsection was rewritten to add new subdivision (2a) that exempts school instructional materials with a sales price of three hundred dollars ($300.00) or less per item if sold during the sales tax holiday. Only the following items are included in the term "school instructional materials": reference books, reference maps and globes, textbooks, and workbooks.

(Effective October 1, 2007 for sales made on or after that date; HB 1473, s. 31.14(b), S.L. 07-323.)

G.S. 105-164.14(j)(3)b. – Refunds for Certain Aircraft Manufacturers:

Sub-subdivision b., which sets out "aircraft manufacturing" as one of the industries eligible for sales and use tax refunds, was expanded by defining the term to include manufacturing and assembling of parts in addition to complete aircraft. As rewritten, the refund provision also applies to eligible facilities that manufacture or assemble aircraft engines, blisks, fuselage sections, flight decks, flight deck systems or components, wings, fuselage fairings, fins, moving leading and trailing wing edges, wing boxes, nose sections, tailplanes, passenger doors, nacelles, thrust reversers, landing gear, braking systems, or any combination thereof. The refund provision applies to qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility.

(Effective July 1, 2007 for purchases made on or after that date; HB 1473, s. 31.10(a), S.L. 07-323.)

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. 105-164.14(n) – Refunds of Tax on Analytical Services Supplies:

This new subsection, as amended, authorizes a refund to a taxpayer engaged in analytical services. The amount of the refund is the greater of the following: (1) Fifty percent (50%) of the eligible amount of sales and use tax paid by a taxpayer engaged in analytical services in this State on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount is the amount by which sales and use taxes paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year. (2) Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents. The refund request must be in writing and must include information and documentation required by the Secretary. It is due within six months after the end of the State's fiscal year; a refund applied for after the due date is barred.

(Effective July 1, 2007 for purchases made on or after that date; HB 1473, s. 31.20(b), S.L. 07-323. Amendment effective July 1, 2007 for purchases made on or after that date; HB 714, s. 14.6(a), S.L. 07-345.)

G.S. 105-164.14(n) – Refunds for Eligible Railroad Intermodal Facilities:

This new subsection authorizes a refund of sales and use taxes paid by the owner or lessee of an eligible railroad intermodal facility on building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly for taxes paid on these items is considered tax paid by the owner or lessee. The refund request must be in writing and include information and documentation required by the Secretary. It is due within six months after the end of the State's fiscal year; a refund applied for after the due date is barred.

(Effective January 1, 2007 for sales made on or after that date; HB 1473, s. 31.23(d), S.L. 07-323.)

***Note:** The legislation authorizing refunds of tax on analytical service supplies and items that become a part of real property of an eligible railroad intermodal facility designated both provisions as*

subsection (n). The codifier of the Statutes will need to change the designation of one of the subsections.

G.S. 105-164.15A – Effective Date of Rate Change:

This section was rewritten to add provisions for the effective date of a rate change for an item that is subject to the combined general rate of tax (telecommunications service, ancillary service, video programming, and spirituous liquor other than mixed beverages. With the legislation authorizing all counties to levy an additional ¼% local tax, it clarifies that the combined general rate will increase on the date on which the tax becomes effective in the first county or group of counties. It also contains provisions for the effective date of a rate change as a result of a change in the State general rate of tax or a repeal in the authorization for local taxes. The heading was rewritten to properly reflect the content of the revised section.

(Effective July 31, 2007; HB1473, s. 31.17(c), S.L. 07-323.)

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(b1) – Monthly Filers:

This subsection was rewritten to make a technical correction. It provides that a taxpayer who is consistently liable for at least (previously, "more than") one hundred dollars ($100.00) but less than ten thousand dollars ($10,000) a month in sales and use taxes must file a return and pay the taxes due on a monthly basis.

(Effective August 31, 2007; SB 540, s. 11, S.L. 07-527.)

G.S. 105-164.16(d) – Use Tax on Out-of-State Purchases:

This subsection was rewritten to codify current administrative practice regarding payment of use tax on boats and aircraft. It specifies that the use tax on purchases of boats and aircraft from outside the State is not to be reported on the purchaser's individual income tax return. The tax is to be reported on Form E-555, Boat and Aircraft Use Tax Return; the return and tax are due on or before the 20th day of the month following the month in which the purchase was made.

(Effective August 31, 2007; SB 540, s. 12, S.L. 07-527.)

G.S. 105-164.29(d) – Revocation of Certificate of Registration:

This subsection was rewritten as a result of the major revision of the appeals procedures. It changes the procedure for revoking a wholesale merchant's or retailer's certificate of registration to parallel the new procedures for refunds and assessment. As rewritten, it requires the Secretary to notify the merchant of the proposed revocation, which will become final unless the merchant object and files a timely request for a Departmental review.

(Effective January 1, 2008; SB 242, s. 19, S.L. 07-491.)

G.S. 105-164.38(c) – Transferee Liability:

This subsection was rewritten as a result of the major revision of the appeals procedures. It makes necessary changes to correspond to the new assessment and collection procedures.

(Effective January 1, 2008; SB 242, s. 20, S.L. 07-491.)

G.S. 105-164.42L – Databases on Taxing Jurisdictions:

This section was rewritten to codify the current practice of providing liability relief to any person who relies on the Department's rates and boundaries databases.

(Effective October 1, 2007; HB 257, s. 5, S.L. 07-244.)

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. 105-164.44I – Distribution of Sales Tax on Video Programming and Telecommunications:

This section 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.)

G.S. 105-164.44I(c1) – Revised Certification for Video Programming and Telecommunications Tax Distribution:

One of the factors on which the distribution is based is the amount of cable franchise tax imposed during the first six months of the 2006-2007 fiscal year as certified to the Secretary by March 15, 2007. This new subsection allows a county or city to submit a new certification revising the amount of cable franchise tax it imposed if the county or city determines the amount imposed differs from the amount certified to the Secretary. Certifications may be submitted on or before October 1, 2007 and April 1, 2008 for distributions for quarters beginning on or after those dates.

(Effective August 31, 2007; SB 540, s. 28, S.L. 07-527.)

Chapter 323 of the 2007 Session Laws – Transfer for Wildlife Resources Commission:

This act provides that, for the 2007-2008 and 2008-2009 fiscal years, the Secretary of Revenue must make a quarterly transfer from the State sales and use tax net collections to the State Treasurer for the Wildlife Resources Fund to fund legislative salary increases for Wildlife Resources Commission employees.

(Effective July 1, 2007; HB 1473, s. 28.15B, S.L. 07-323.)

Chapter 525 of the 2007 Session Laws – Study Continuation of Exemption for Nutritional Supplements Sold by Chiropractor:

This act provides that the Revenue Laws Study Committee may study whether to continue the sales tax exemption under G.S. 105-164.13(13c) for nutritional supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment.

(Effective August 31, 2007; SB 864, s. 14, S.L. 07-525.)

LOCAL SALES AND USE TAX

G.S. 105-467(a)(5a) – County Tax Imposed on Certain Bundled Transactions:

This is a new subdivision that provides that the 1% local tax under Article 39 applies to the sales price of a bundled transaction that includes qualifying food subject to only the 2% local tax if the price of the qualifying food exceeds 10% of the price of the bundle. These products are also subject to the ½% rates of tax levied under Articles 40 and 42.

(Effective October 1, 2007; HB 257, s. 6, S.L. 07-244.)

G.S. 105-467(a)(5b) – County Tax Imposed on Certain Bakery Thrift Store Products:

This is a new subdivision that provides that the 1% local tax under Article 39 applies to the sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S. 105-164.13(27a). These products are also subject to the ½% rates of tax levied under Articles 40 and 42.

(Effective October 1, 2007; SB 1240, s. 2, S.L. 07-368.)

G.S. 105-472(b1) – First One Percent Local Tax Distribution:

This new subsection is added to reduce the county's allocation by the amount of the city's hold harmless amount. The reduction does not affect the portion of the county's distribution that is shared with its municipalities. A corresponding change is made to the Mecklenburg first one percent local tax.

(Effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(d), S.L. 07-323.)

G.S. 105-501 – Distribution of Second One-Half Percent Local Sales and Use Tax:

This section alters the method of distributing the proceeds of the second one-half percent tax from per capita to point of origin. The amount of the net proceeds allocated to a county is no longer adjusted by the statutory adjustment factors.

(Effective October 1, 2009 for distributions for months beginning on or after that date; HB 1473, s. 31.16.4(b), S.L. 07-323.)

G.S. 105-519 – Third One-Half Percent Local Tax Not Imposed on Certain Bundled Transactions:

This section was rewritten to provide that the third one-half percent local tax does not apply to the sales price of a bundled transaction that includes qualifying food subject to only the 2% local tax if the price of the qualifying food exceeds 10% of the price of the bundle.

(Effective October 1, 2007; HB 257, s. 8, S.L. 07-244.)

G.S. 105-520 – Distribution of Third One-Half Percent Local Tax:

As a result of the reduction of the third one-half percent local tax to one-quarter percent, the method of distributing the proceeds of the tax changes. The one-quarter percent tax will be distributed monthly on a point of origin basis; no portion of the proceeds of this levy will be distributed on a per capita basis.

(Effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(b), S.L. 07-323.)

G.S. 105-515 through 105-520 – Third One-Half Percent Local Sales and Use Tax Repealed:

The sections providing for the adoption, levy, administration, and distribution of the third one-half percent tax are repealed.

(Effective October 1, 2009 for sales occurring on or after that date; HB 1473, s. 31.16.4(a), S.L. 07-323.)

G.S. 105-521 – Hold Harmless for Repealed Reimbursements:

As a result of the reduction of the third one-half percent local tax to one-quarter percent, a hold harmless provision is added to replace the repealed reimbursements. A definition of "replacement revenue" is added; this term is defined as the sum of 50% of the revenue distributed under Article 40 other than revenue from the sale of qualifying food subject to only the 2% local tax and 25% of the revenue distributed under Article 39 (first one-cent local tax) or under the Mecklenburg first one-cent tax other than revenue from the sale of qualifying food subject to only the 2% local tax. A local government is reimbursed if the estimated amount of replacement revenue is less than the repealed reimbursement amount. The source of the funds for hold harmless distributions is State sales and use tax collections.

(Effective January 1, 2008; HB 1473, s. 31.16.3(c), S.L. 07-323.)

G.S. 105-522 – City Hold Harmless for Repealed Local Taxes:

This is a new section providing that a municipality that was incorporated on or before October 1, 2008 and receives a sales and use tax distribution under G.S. 105-472 receives a hold harmless amount. The hold harmless amount is 50% of the amount of sales and use tax revenue distributed for a month to the municipality under Article 40 other than revenue from sales of qualifying food subject to only the 2% local tax. A county must hold the municipalities harmless from the repeal of the taxes formerly imposed under Article; the municipality's hold harmless amount is to be added to the municipality's monthly distribution. The revenue for the hold harmless distribution is obtained by reducing each county's monthly allocation under G.S. 105-472(b) or under the corresponding provision in the Mecklenburg first one-cent sales tax act by the hold harmless amounts for the municipalities in that county.

(Effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(f), S.L. 07-323. The calculation of the repealed sales tax amount is changed for fiscal year 2008-2009; effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(g), S.L. 07-323. The calculation of the hold harmless amount is amended; effective October 1, 2009 for distributions for months beginning on

or after that date; HB 1473, s. 31.16.4(c), S.L. 07-323. For the 2009-2010 fiscal year, further changes are made in the method of calculating the repealed sales tax amount; effective October 1, 2009; HB 1473, s. 31.16.4(e), S.L. 07-323. Further revisions are made in the method of calculating the hold harmless amount; effective October 1, 2009 for distributions for months beginning on or after that date; HB 714, s. 14.4(a), S.L. 07-345.)

G.S. 105-523 – County Hold Harmless for Repealed Local Taxes:

This is a new section requiring the Secretary to make hold harmless payments to a county if the "repealed sales tax amount" for a fiscal year exceeds the county's "hold harmless threshold." These terms are defined in this section. To determine if the county is eligible for a hold harmless payment, the Secretary must estimate a county's repealed sales tax amount and hold harmless threshold for a fiscal year and must send an eligible county 90% of its estimated hold harmless payment with the monthly distribution made under G.S. 105-472 for March of that year. At the end of each fiscal year, the Secretary is required to determine the difference between a county's repealed sales tax amount and its hold harmless threshold for that year and send the remainder of the county's hold harmless payment for the fiscal year ended June 30 by August 15. The intent of this section is that each county benefit by at least $500,000 annually from the exchange of a portion of the local sales and use taxes for the State's assumption of responsibility for the non-administrative costs of Medicaid.

(Effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(f), S.L. 07-323. The calculation of the repealed sales tax amount is changed for fiscal year 2008-2009; effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(g), S.L. 07-323. The calculation of the hold harmless amount is amended; effective October 1, 2009 for distributions for months beginning on or after that date; HB 1473, s. 31.16.4(d), S.L. 07-323. For the 2009-2010 fiscal year, further changes are made in the method of calculating the repealed sales tax amount; effective October 1, 2009; HB 1473, s. 31.16.4(e), S.L. 07-323. Further revisions are made in the method of calculating the repealed sales tax amount; effective October 1, 2009 for distributions for months beginning on or after that date; HB 714, s. 14.4(b), S.L. 07-345.)

Chapter 323 of the 2007 Session Laws – Reduction of Third One-Half Percent Local Sales and Use Tax:

As a result of the State's assumption of Medicaid responsibilities for the counties, this act reduces the one-half percent (½%) sales and use tax authorized under Article 44 of Chapter 105 of the General Statutes to one-quarter percent (¼%). No action is required of the county; a resolution enacted by the county to levy the one-half percent tax is considered to be a resolution authorizing the levy of the one-quarter percent tax. The one-quarter percent reduction is offset by a one-quarter percent increase in the State general rate of sales and use tax.

(Effective October 1, 2008 for sales occurring on or after that date; HB 1473, s. 31.16.3(a), S.L 07-323. The remaining one-quarter percent (¼%) local tax under Article 44 is repealed; effective October 1, 2009 for sales occurring on or after that date; HB 1473, s. 31.16.4(a), S.L. 07-323.)

Chapter 323 of the 2007 Session Laws – Hold Harmless:

This act provides that, effective October 1, 2007, the State begins assuming Medicaid responsibilities for the counties over a three-year period. There is a county hold harmless provision, and the revenue for the hold harmless distribution is to be withheld from State sales and use tax collections. The Secretary is required to estimate a county's hold harmless amount for the 2007-2008 fiscal year and send the county 90% of the estimated amount with the monthly sales tax distribution for March 2008. The Secretary must determine the county's actual hold harmless amount for the 2007-2008 fiscal year and send the remainder to the county by August 15, 2008.

(Effective July 31, 2007; HB 1473, ss. 31.16.2(a) through 31.16.2 (c), S.L. 07-323.)

Chapter 323 of the 2007 Session Laws – Article 44 Title:

The title of Article 44 is changed from "Third One-Half Cent (1/2¢) Local Government Sales and Use Tax" to "Local Government Hold Harmless Provisions" as a result of the incremental repeal of the third one-half percent local tax.

(Effective October 1, 2009; HB 1473, s. 31.16.4(f), S.L. 07-323.)

Article 46 – One-Quarter Cent County Sales and Use Tax:

A new Article 46 of Subchapter VIII of Chapter 105 was added to give counties the authority to impose additional ¼% local sales and use taxes. The new Article consists of G.S. 105-535 through 105-538. An explanation of each section follows.

The new Article accompanies another change that gives counties the choice of levying the additional sales and use tax or levying a county land transfer tax; a county may not levy both taxes.

(Effective July 31, 2007; HB1473, s. 31.17(b), S.L. 07-323.)

G.S. 105-535 – Short Title of New Article 46:

This statute sets out the short title of new Article 46 of Subchapter VIII of Chapter 105. The short title is "One-Quarter Cent (1/4¢) County Sales and Use Tax Act."

(Effective July 31, 2007; HB1473, s. 31.17(b), S.L. 07-323.)

G.S. 105-536 – Limitations on Levying New Tax:

This statute states that a county cannot levy a tax under Article 46 unless it has already levied the 1% and the first and second one-half cent local sales and use taxes.

(Effective July 31, 2007; HB1473, s. 31.17(b), S.L. 07-323.)

G.S. 105-537 – Levy of New Tax:

This statute specifies that the board of county commissioners can hold an election on whether to levy the tax and sets out the procedures for a county to follow if it wants to hold an election. If the voters approve the levy, the board may, by resolution, levy the tax. The board cannot levy the tax without an advisory election. A sales and use tax levied under Article 46 may not be in effect in a county at the same time as a land transfer tax levied under Article 60 of Subchapter X of Chapter 105.

(Effective July 31, 2007; HB1473, s. 31.17(b), S.L. 07-323.)

G.S. 105-538 – Administration of New Tax:

This statute states that the new ¼% tax is to be administered the same as the 1% local sales and use tax, except as specified in Article 46. The new tax does not apply to qualifying food that is exempt from State tax under G.S. 105-164.13B and subject only to the 1% and two ½% local sales and use taxes. The proceeds from the tax are distributed to the counties; the amounts allocated to counties are not divided between the counties and the municipalities in the counties. Notwithstanding statutory requirements set out in G.S. 105-467(c), during the 2008 calendar year, a tax levied under Article 46 may become effective on the first day of any calendar quarter provided the county gives the Secretary at least 60 days' advance notice of the new tax levy.

This statute was amended to add a provision that G.S. 105-468.1, which is an administrative provision under the first one percent local tax levy, applies to this Article. The provision states that a new tax does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded, or entered into or awarded pursuant to a bid made, before the effective date of the tax imposed by a taxing county when the construction materials would otherwise be subject to the tax

(Effective July 31, 2007; HB 1473, s. 31.17(b), S.L. 07-323. Amendment effective August 6, 2007; HB 714, s. 14.5(a), S.L. 07-345.)

Chapter 1096 of the 1967 Session Laws, as Amended – Mecklenburg County Tax Imposed on Certain Bundled Transactions:

A conforming change was made to the Mecklenburg First One Cent Sales Tax Act. New subdivision (5a) provides that the 1% local tax under the Mecklenburg Local Act applies to the sales price of a bundled transaction that includes qualifying food subject to only the 2% local tax if the price of the qualifying food exceeds 10% of the price of the bundle.

(Effective October 1, 2007; HB 257, s. 7, S.L. 07-244.)

Chapter 1096 of the 1967 Session Laws, as Amended – Mecklenburg County Tax Imposed on Certain Bakery Thrift Store Products:

A conforming change was made to the Mecklenburg First One Cent Sales Tax Act. New subdivision (5b) provides that the 1% local tax under the Mecklenburg Local Act applies to the sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S. 105-164.13(27a).

(Effective October 1, 2007; SB 1240, s. 3, S.L. 07-368.)

Chapter 1096 of the 1967 Session Laws, as Amended – Mecklenburg First One Percent Local Tax Distribution:

A new paragraph is added to reduce the Mecklenburg County's allocation by the amount of the city's hold harmless amount. The reduction does not affect the portion of Mecklenburg County's distribution that is shared with its municipalities. A corresponding change is made to the first one percent local tax for other counties.

(Effective October 1, 2008 for distributions for months beginning on or after that date; HB 1473, s. 31.16.3(e), S.L. 07-323.)

HIGHWAY USE TAX – ARTICLE 5A

G.S. 105-187.10(b) – Collection of Unpaid Highway Use Tax:

This subsection was rewritten as a result of the major revision of the appeals procedures. It provides that the remedies for collection of taxes under Article 9 apply to the highway use tax; prior to this change, the remedies in G.S. 20-99 apply. For purposes of this subsection, it also grants the Commissioner of Motor Vehicles the same authority as the Secretary of Revenue.

(Effective January 1, 2008; SB 242, s. 21, S.L. 07-491.)

G.S. 105-187.11 – Transition from Sales Tax to Highway Use Tax:

This obsolete section was repealed.

(Effective August 31, 2007; SB 540, s. 30, S.L. 07-527.)

SCRAP TIRE DISPOSAL TAX – ARTICLE 5B

G.S. 105-187.19(a) – Distribution/Cost of Collection:

This subsection, which allows the Department to retain from the taxes to be distributed an allowance for administrative expenses, was rewritten to increase the amount the Department may withhold as reimbursement. The maximum amount that may be retained annually as cost of collection, was increased from $225,000 to $425,000.

(Effective July 1, 2007; HB 1473, s. 24.2, S.L. 07-323.)

G.S. 105-187.19(b) – Change in Distribution:

This subsection was rewritten to change the percentages of the net tax proceeds credited to various accounts and distributed to the counties on a quarterly basis. The amount to be credited to the Solid Waste Management Trust Fund increases from 5% to 8%. The amount to be credited to the Scrap Tire Disposal Account decreases from 27% to 22%. The balance, which increases from 68% to 70%, is distributed among the counties on a per capita basis.

(Effective July 1, 2007; SB 1472, s. 1, S.L. 07-153.)

WHITE GOODS DISPOSAL TAX – ARTICLE 5C

G.S. 105-187.24 – Distribution/Cost of Collection:

This section, which allows the Department to retain from the taxes to be distributed an allowance for administrative expenses, was rewritten to increase the amount the Department may withhold as reimbursement. The maximum amount that may be retained annually as cost of collection, was increased from $225,000 to $425,000.

(Effective July 1, 2007; HB 1473, s. 24.1, S.L. 07-323.)

DRY-CLEANING SOLVENT TAX – ARTICLE 5D

G.S. 105-187.31 – Tax Imposed:

This section was rewritten to make a conforming change. The term "chlorine-based" was replaced with the term "halogenated hydrocarbon-based." The rates of ten dollars ($10.00) for each gallon of halogenated hydrocarbon-based dry-cleaning solvent and one dollar and thirty-five cents ($1.35) for each gallon of hydrocarbon-based dry-cleaning solvent are unchanged.

(Effective August 31, 2007; SB 1362, s. 13, S.L. 07-530.)

MANUFACTURING FUEL AND CERTAIN MACHINERY AND EQUIPMENT – ARTICLE 5F

G.S. 105-187.50 – Article 5F Definitions:

This section was rewritten and adds definitions as a result of the expansion of the imposition of the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article on certain data center purchases. The term **"concurrently maintainable"** is defined as

"capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment." The term **"eligible datacenter"** is defined as "a facility that provides infrastructure for hosting or data processing services and satisfies each of the following conditions:

a. The facility's power and cooling systems are created and maintained to be concurrently maintainable and include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. The facility must have multiple distribution paths serving the computer equipment; however, a single distribution path may serve the computer equipment at any one time.

b. The Secretary of Commerce has made a written determination of the following:

    1. For facilities that are located in a development tier one area at the time of application for the written determination, that at least one hundred fifty million dollars ($150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.

    2. For facilities that are not located in a development tier one area at the time of application for the written determination, that at least three hundred million dollars ($300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.

c. The facility satisfies the wage standard and health insurance requirements of G.S. 105-129.83.

The term **"multiple distribution paths"** is defined as "a series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths." The term **"redundant capacity components"** is defined as "components beyond those required to support the computer equipment."

(Effective October 1, 2007 for sales made on or after that date; HB 1473, s. 31.22(a), S.L. 07-323.)

G.S. 105-187.51A – Privilege Tax on Manufacturing Fuel:

This section was rewritten to reflect a reduction in the privilege tax rate imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The rate is reduced from one percent (1%) to seven-tenths percent (0.7%).

(Effective October 1, 2007 for fuel purchased on or after that date; SB 3, s. 12(a), S.L. 07-397. The rate is reduced from 0.7% to 0.5%; effective July 1, 2008 for fuel purchased on or after that date; SB 3, s. 12(b), S.L. 07-397. The rate is further reduced from 0.5% to 0.3%; effective July 1, 2009 for fuel purchased on or after that date; SB 3, s. 12(c), S.L. 07-397. The section is repealed and purchases of fuel by manufacturers are exempt from tax; effective July 1, 2010; SB 3, s. 12(d), S.L. 07-397.)

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. 105-187.51B(a)(2)c. – Privilege Tax on Research and Development Companies:

This sub-subdivision was rewritten to clarify one of the requirements that must be met in order for a research and development company's purchases to be subject to the privilege tax. Items that would be considered mill machinery parts or accessories (in addition to mill machinery) if purchased by a manufacturer in its research and development of tangible personal property it manufactures are subject to the privilege tax.

(Effective July 1, 2007; SB 540, s. 13(a), S.L. 07-527.)

G.S. 105-187.51B(a)(3) – Privilege Tax on Software Publishers' Machinery and Equipment:

This new subdivision expands the imposition of the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article to include a software publishing company that is included in the industry group 5112 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets certain requirements. In order to be subject to the privilege tax, the equipment or an attachment or repair part for the equipment must be: (1) capitalized by the company for tax purposes under the Code, (2) used by the company in the research and development of tangible personal property, and (3) considered mill machinery 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.

(Effective October 1, 2007 for sales occurring on or after that date; HB 1473, s. 31.7(a), S.L. 07-323.)

G.S. 105-187.51C – Privilege Tax on Datacenter Machinery and Equipment:

This is a new section that imposes the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article on an eligible datacenter, other than one as defined in G.S. 105-164.3(8e) that purchases machinery or equipment to be located and used at the datacenter. The machinery and equipment must be capitalized for tax purposes under the Code and must be use either: (1) for providing datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware and software for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems; or (2) for generating, transforming, transmitting, distributing, or managing electricity, including exterior substations and other business personal property used for these purposes.

The section includes a forfeiture provision in the event the required level of investment for qualification as an eligible datacenter is not timely made or any eligible machinery and equipment is not located and used at an eligible datacenter. The section specifies that a taxpayer that forfeits the privilege tax rate is liable for all past sales and use taxes avoided, computed at the combined general rate of tax; a credit is allowed against the sales or use tax owed for privilege taxes paid. There are provisions that stipulate the date from which interest is computed.

This section imposing the privilege tax on an eligible datacenter expires for sales occurring on or after July 1, 2013.

(Effective October 1, 2007 for sales made on or after that date; HB1473, s. 31.22(b), S.L. 07-323.)

G.S. 105-187.52(c) – Administration of Privilege Tax:

This is a new subsection that codifies the current administrative practice of exempting State agencies from the privilege tax as well as from sales and use tax.

(Effective August 31, 2007; SB 540, s. 14, S.L. 07-527.)

SOLID WASTE DISPOSAL TAX – ARTICLE 5G

A new Article 5G of Subchapter I of Chapter 105 was added effective July 1, 2008. The new Article consists of G.S. 105-187.60 through 105-187.63.

(Effective July 1, 2008; SB 1492, s. 14(a), S.L. 07-550.)

G.S. 105-187.60 – Definitions:

This section provides that the definitions set out in G.S. 105-164.3 and G.S. 130A-290 apply to this Article.

(Effective July 1, 2008; SB 1492, s. 14(a), S.L. 07-550.)

G.S. 105-187.61 – Tax Imposed:

This section imposes an excise tax on the disposal of municipal solid waste and construction and demolition debris in any landfill permitted pursuant to Article 9 of Chapter 130A of the General Statutes at a rate of two dollars ($2.00) per ton of waste. An excise tax at the same rate is also imposed on the transfer of municipal solid waste and construction and demolition debris to a transfer station permitted under the same Article for disposal outside the State. The tax is due on waste and debris received from third parties and on waste and debris disposed of by the owner or operator; it is payable by the owner or operator of each landfill and transfer station.

(Effective July 1, 2008; SB 1492, s. 14(a), S.L. 07-550.)

G.S. 105-187.62 – Administration of Tax:

This section requires the owner or operator of the landfill or transfer station to maintain scales designed to determine waste tonnage that are approved by the Department of Agriculture and Consumer Services. The owner or operator must record waste tonnage when the waste is received and must maintain records required by the Secretary of Revenue. The owner or operator may add the solid waste disposal tax due to the charges made to a third party for disposal of municipal solid waste or construction and demolition debris. The tax is payable and a return is due to be filed in the same manner as required for sales and use tax under G.S. 105-164.16.

(Effective July 1, 2008; SB 1492, s. 14(a), S.L. 07-550.)

G.S. 105-187.63 – Use of Tax Proceeds:

This section, as amended, allows the Secretary of Revenue to retain the costs of collection, not to exceed $225,000. The proceeds of the tax, less the costs of collection, are to be distributed as follows: (1) Fifty percent (50%) to the Inactive Hazardous Sites Cleanup Fund established by G.S. 130A-310.11. (2) Eighteen and seventy-five one hundredths percent (18.75%) is to be distributed to cities in the State on a per capita basis and eighteen and seventy-five one hundredths percent (18.75%) is to be distributed to counties in the State on a per capita basis. Persons who reside within a city are not counted in the population of the county or counties in which the city is located. (3) Twelve and one-half percent (12.5%) to the Solid Waste Management Trust Fund established by G.S. 130A-309.12.

(Effective July 1, 2008; SB 1492, s. 14(a), S.L. 07-550. Amendment effective July 1, 2008; SB 6, s. 2, S.L. 07-543.)

PROPERTY TAX

G.S. 161-31 — Collection of Delinquent Property Taxes:

Adds Burke County, Caswell County, Greene County, Jones County and Wayne 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 16, 2007; HB 464, s. 1, S.L. 2007-221.)

G.S. 153A-357— Collection of Delinquent Property Taxes:

Adds Gates County to the list of counties, which by resolution, may prohibit the issuance of a building permit to a delinquent taxpayer.

(Effective May 30, 2007; SB 624, s. 1, S.L. 2007-58.)

G.S. 105-275 — Property Tax – School Capital Leases:

Adds a new property tax exclusion for real or personal property that is subject to a capital lease pursuant to G.S. 115C-531.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2007; HB 63, s. 1, S.L. 2007-477.)

G.S. 105-277.14 — Taxation of Working Waterfront Property:

Provides tax relief for working waterfront property by requiring that property meeting the definition of a working waterfront be appraised at its present use and not at its highest and best use or true value. The difference in taxes due on the property appraised at its present use and the taxes due on the property appraised at its true value is a lien on the property and is to be carried as deferred taxes. If the property loses its qualification as a working waterfront, the current taxes are based on the true value of the property and the deferred taxes for the preceding three fiscal years become due with interest.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2009; SB 646, s. 1, S.L. 2007-485.)

G.S. 105-288(a) — Property Tax Commission Terms:

Provides for all appointments to the Property Tax Commission to be four-year terms by changing the term of the member appointed by the Speaker of the House of Representatives from two years to four years. Applies to appointments made after July 1, 2007.

(Effective July 28, 2007; HB 1555, s. 1, S.L. 2007-308.)

G.S. 105-228.37 — Refund of Overpayment of Tax:

Changes the refund request procedures for overpayment of deed excise tax. The board of county commissioners must hold a hearing in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. The decision of the county board may be appealed to the North Carolina Property Tax Commission pursuant to G.S. 105-290. The decision of the Property Tax Commission is subject to judicial review in accordance with G.S. 7A-29.

(Effective January 1, 2008; SB 242, s. 24, S.L. 2007-491.)

G.S. 105-290(d) — Challenge to an Administrative Subpoena:

Provides that upon a motion, the Property Tax Commission or a member of the Commission may quash a subpoena if it does not relate to a matter at issue or if the subpoena fails to describe with sufficient particularity why the evidence is required. A motion to quash a subpoena must be heard at least 10 days prior to the hearing for which the subpoena was issued. A denial to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County.

(Effective July 20, 2007; SB 1432, s. 3 and s. 4, S.L. 2007-251.)

G.S. 105-330.10 — Disposition of Interest:

Clarifies that the interest on unpaid registration fees pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the North Carolina Highway Fund for technology improvements within the Division of Motor Vehicles. Also clarifies that the interest generated by the funds in the Combined Motor Vehicle and Registration Account shall be credited to the account.

(Effective August 29, 2007; HB 1688, s. 7(A), S.L. 2007-471.)

G.S. 20-79.1, 20-79.1A, 105-330.4 and 105-330.5 — Use of Temporary Registration Plates or Markers by Purchasers of Motor Vehicle in Lieu of Dealer's Plates:

Provides a procedure where by a new motor vehicle owner may purchase a vehicle and is not required to pay the taxes at the time the application for registration is made. Clarifies that motor vehicle dealers are not required to collect property taxes at the time a vehicle is sold.

(Effective July 1, 2010; HB 1688, s. 1, s. 2, s. 3, s. 4 and s. 5, S.L. 2007-471.)

G.S. 105-330.1(b) — International Registration Plan:

Adds vehicles registered under the International Registration Plan to the list of vehicles not classified under Article 22A. These vehicles are required to be listed with the county assessor in January of each year by the owner as of January 1st of each year.

(Effective July 1, 2010; HB 1688, s. 6, S.L. 2007-471.)

G.S. 105-277.1 — Adjusts the Exclusion Amount, Income Eligibility Limit, and the Definition of Income for the Homestead Exclusion:

This bill raises the exclusion amount to the greater of $25,000 (previously $20,000) or 50% of the appraised value of the residence. This bill also raises the income eligibility limit for the homestead exclusion to $25,000 for the 2008 tax year. The limit for subsequent years will continue to be adjusted and set by the NCDOR according to the cost-of-living adjustments as currently required by the statutes. The bill also changes the definition of income by deleting the language "Adjusted gross income, as defined in section 62 of the Code, plus all other..." and replacing it with the word "All".

This bill also provides for the election by the taxpayer of the traditional homestead exclusion or the newly enacted homestead circuit breaker (effective for taxable years beginning on or after July 1, 2009) when the taxpayer qualifies for both provisions.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; HB 1499, s. 2.1 and s. 2.2, S.L. 2007-497 s. 1.1.)

S.L. 2007-497 Section 1.2 — Revenue Laws Study Committee to Study Issue of Indexing the Minimum Excluded Appraised Value in the Homestead Exclusion:

The Revenue Laws Study Committee may study the issue of whether to index the minimum excluded appraised value limit in the property tax homestead exclusion in G.S. 105-277.1 and, if so, which index to use.

(Effective August 30, 2007; HB 1499, s. 1.2, S.L. 2007-497.)

G.S. 105-277.1B — Creates New Property Tax Homestead Circuit Breaker:

This bill creates a new property tax homestead circuit breaker program, effective for taxable years beginning on or after July 1, 2009. Taxpayers who qualify for and elect this option will pay taxes as limited by a percentage of their income. The unpaid difference in taxes will continue on the records as deferred taxes which will become payable, for up to three prior years, upon a disqualifying event. An initial application is required, but an application is not required in subsequent years unless there are changes that would require a review of the qualifications of the property or the owner.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2009; HB 1499, s. 2.3, 2.4, and 2.5, S.L. 2007-497.)

G.S. 105-277.3 — Modifies Definition of Agricultural Land to Specifically Include Aquatic Species:

This bill states that land used to farm aquatic species can be agricultural land if the land meets the income requirements, and if the land in production is at least five acres or has produced at least 20,000 pounds of aquatic species for commercial sale annually, regardless of size.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; HB 1499, s. 3.1, S.L. 2007-497.)

S.L. 2007-497 Sections 4.1 and 4.2 — Revenue Laws Study Committee to Study Tax Relief for Nondevelopmental Property:

The Revenue Laws Study Committee may study ways to address the inability of landowners to pay property taxes while maintaining nondevelopmental uses.

(Effective August 30, 2007; HB 1499, s. 4.1 and s. 4.2, S.L. 2007-497.)

MOTOR FUELS TAX

G.S. 105-449.39 – Reference Change:

This statute was amended to change the refund processing cross-reference to G.S. 105-241.7.

(Effective January 1, 2008; SB 242, s. 40, S.L. 07-491.)

G.S. 105-449.52 – Clarifying:

This statute was amended to clarify that a penalty imposed under this section is payable to the agency that assessed the penalty.

(Effective August 31, 2007; SB 540, s. 16(a), S.L. 07-527.)

G. S. 105-449.72(a)(2) – Bond Requirement Adjustment:

This statute was amended to modify the bond requirement for a fuel alcohol provider or biodiesel provider. The bond amount is the same as that for the blender, no bond is required unless the annual liability is at least $2,000.

(Effective August 31, 2007; SB 540, s. 17(a), S.L. 07-527.)

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, 2007 – June 30, 2009; HB 1473, s. 31.15(a), S.L. 07-323.)

G.S. 105-449.81(3a) – Repealed:

This statute was repealed because there was conflicting point of taxation statutes for fuel alcohol and biodiesel. Prior to the law change, this statute placed the imposition of the tax at the point of sale. Fuel alcohol and biodiesel are defined in the definition of motor fuels and tax is imposed motor fuel at the terminal rack or upon importation to this State.

(Effective January 1, 2007; SB 540, s. 38(a), S.L. 07-527.)

G.S. 105-449.88 – Exemption:	This statute was amended to exempt biodiesel from the excise tax if the fuel was produced by an individual for use in a private passenger vehicle owned by the individual. *(Effective October 1, 2007; SB 1272, s. 1, S.L. 07-524.)*
G.S. 105-449.115(f) – Clarifying:	This statute was amended to clarify that a penalty imposed under this section is payable to the agency that assessed the penalty. *(Effective August 31, 2007; SB 540, s. 16(b), S.L. 07-527.)*
G.S. 105-449.115(g) – Clarifying:	This statute was amended to remove the seven-day time limit for obtaining a diversion number without being assessed the penalty. This amended statute also clarifies that the transporter is not required to verify that the tax was paid in order to have a penalty waived. *(Effective August 31, 2007; SB 540, s. 18(a), S.L. 07-527.)*
G.S. 105-449.115A(c) – Clarifying:	This statute was amended to clarify that defense for the penalty imposed under this section is payable to the agency that assessed the penalty. *(Effective August 31, 2007; SB 540, s. 16(c), S.L. 07-527.)*
G.S. 105-449.117(b) – Clarifying:	This statute was amended to clarify that a penalty imposed under this section is payable to the agency that assessed the penalty. *(Effective August 31, 2007; SB 540, s. 16(d), S.L. 07-527.)*
G.S. 105-449.118 – Clarifying:	This statute was amended to clarify that a penalty imposed under this section is payable to the agency that assessed the penalty. *(Effective August 31, 2007; SB 540, s. 16(e), S.L. 07-527.)*
G.S. 105-449.118A – Clarifying:	This statute was amended to clarify that a penalty imposed under this section is payable to the agency that assessed the penalty. *(Effective August 31, 2007; SB 540, s. 16(f), S.L. 07-527.)*
G.S. 105-449.119 – Administrative Review:	This statute was amended to conform to the Department's revised administrative review process. The statutes did not change the requirement that payment of the penalty must be made before the administrative review is granted. *(Effective January 1, 2008; SB 242, s. 41, S.L. 07-491.)*

G.S. 119-17 – Repealed:

This statute was repealed because this statute describes the usage of the fuel. The inspection tax is on the fuel itself without regard to the usage.

(Effective August 31, 2007; SB 540, s. 20, S.L. 07-527.)

GENERAL

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, 2006 to January 1, 2007. Any amendments to the Internal Revenue Code enacted in 2006 that increase North Carolina taxable income for the 2006 taxable year become effective for taxable years beginning on or after January 1, 2007.

(Effective July 31, 2007; HB 1473, s. 31.1, S.L. 07-323.)

G.S. 105-228.90(b)(7) – Conforming Change:

This subdivision was amended to conform to the new assessments, refunds, and appeals processes explained below.

(Effective January 1, 2008; SB 242, s. 25, S.L. 07-491.)

G.S. 105-236(a)(4) – Conforming Change:

This subdivision was amended to conform to the new assessments, refunds, and appeals processes explained below.

(Effective January 1, 2008; SB 242, s. 26, S.L. 07-491.)

G.S. 105-239.1 - Transferee Liability:

This statute establishes a lien on property sold for inadequate consideration if the transferor owes tax and is insolvent at the time of transfer or is made insolvent by transfer of the asset. If the transferee subsequently sells or disposes of the property before the State can execute on its lien, the transferee can be held personally liable for the fair market value of the property.

Under old law, the Department docketed a certificate of tax liability and requested the clerk of court to issue an execution against it to foreclose upon the transferred property. The transferee was allowed to recoup any payments made to the transferor before funds were applied to the tax debt.

Under the new law, a proposed assessment is sent to the transferee, essentially transferring the liability to that person. The Department has the burden of proof to establish that the person to whom the property was transferred is liable. Upon sale of the transferred property, the transferee is allowed to recoup any

payments made to the transferor before funds are applied to the tax debt.

(Effective January 1, 2008; SB 242, s. 27, S.L. 07-491.)

G.S. 105-241(b)(2) – Electronic Funds Transfer Required for Prepayment Taxes:

A conforming change was made to the provision requiring payment by electronic funds transfer for taxpayers who are required to make prepayments. The provision was rewritten as a result of the change from semimonthly payments to prepayments for a taxpayer who is consistently liable for at least $10,000 a month in State and local sales and use taxes.

(Effective August 31, 2007; SB 540, s. 31, S.L. 07-527.)

G.S. 105-242(a) - Levy and Sale:

This statute provides the authority and legal mechanism for the Department to seize and sell real and tangible personal property to satisfy unpaid tax debt. The law was updated to simplify and modernize the language. No significant changes to the process for seizing property are evident in the bill.

(Effective January 1, 2008; SB 242, s. 28, S.L. 07-491.)

G.S. 105-242(b) - Garnishment and Attachment:

This statute provides the authority and legal mechanism for the Department to seize intangible property, such as wages and bank deposits, to satisfy unpaid tax debt. The changes simplify and modernize the language of the statute. The bill also includes several significant changes to the process for administering garnishments.

Under old law, the method of service for garnishments followed Rule 4 of the North Carolina Rules of Civil Procedure. Once a garnishment was served, the garnishee had 10 days to offer a defense or setoff of the garnishment. If no timely response was offered, the garnishee was responsible for withholding and remitting any funds held or owed by the garnishee to the debtor taxpayer to the Department of Revenue. If the garnishee did not offer a valid defense within 10 days, and failed to turn over property as required by the garnishment, the Department could seek court action to transfer the debt to the garnishee. The Department had to file suit against the garnishee in the superior court in the county in which the garnishee resided or operated a business. The process to transfer tax to the garnishee was complicated and rarely used by the Department. Additionally, the Department was required to send a copy of the 105-242(b) with all garnishments served.

Under the new law, the person in possession of property owed to or owned by a debtor taxpayer becomes liable for the debt upon service of the garnishment and attachment. This liability is limited to the amount the person is holding on behalf of the taxpayer, reduced by any amounts owed by the taxpayer to the garnishee. The new statute simplifies the procedure for holding the garnishee

liable. Occasionally, a garnishee will fail to offer a valid defense within the time required by statute and will also refuse to turn over property subject to the garnishment. The Department is no longer required to seek court action to transfer the debt to the garnishee.

This method of service and other related procedures were removed from G.S. 105-242. G.S. 105-242.1, Procedures for Attachment and Garnishment, was enacted to provide these procedures.

(Effective January 1, 2008; SB 242, s.29, S.L. 07-491.)

G.S. 105-242(c) - Certificate of Tax Liability:

This statute provides the method by which the Department issues a tax lien and makes past-due tax debts a public record. The certificate of tax liability (CTL) is indexed in the records of the county clerks of superior court with other judgments. It establishes a lien on both the real and personal property owned by the subject taxpayer from the date it is recorded.

The new law clarifies that the CTL is a judgment. It should be docketed in the county where the taxpayer resides or has property. The new statute adds that the Department should docket the CTL in Wake County if the taxpayer neither resides in nor owns property located in North Carolina. The law also clarifies that the standard judgment interest rate set forth in G.S. 24-1 applies to CTLs.

Under both the new and old laws, the tax represented on a CTL abates after 10 years. Under the old law, the tolling of the 10-year period stopped during 5 specific events provided by statute. A new event is added to stop the tolling of the 10-year period. The new event allows the subject taxpayer to waive the abatement of tax for any period. This change gives the Department additional flexibility in negotiating more favorable repayment terms to taxpayers owing past due taxes but owning property.

(Effective January 1, 2008; SB 242, s. 31, S.L. 07-491.)

G.S. 105-242.1 - Procedures for Attachment and Garnishment:

This new statute describes how garnishments and attachments are to be issued and released. It also provides the procedures for holding a garnishee liable that fails to respond to a garnishment and attachment.

Under the new law, the method of serving garnishments and attachments no longer follows the NC Rules of Civil Procedure. Garnishments issued by the Department are served using the same methods as tax assessments as provided in G.S. 105-241.20. Alternatively, they may be served using registered or certified mail.

The new law no longer requires the Department to send a copy of the statute with the garnishment. Rather, it must provide an explanation of the liability of a garnishee for tax owed by a taxpayer.

The new law gives garnishees 30 days to respond to the garnishment. A new procedure is established for handling responses from garnishees that offer a defense to the garnishment. The taxpayer must offer the defense in writing within 30 days of service. The defense must state why the garnishee is not subject to the garnishment. Upon receipt, the Department must schedule a conference to discuss the defense with the garnishee. If the Department does not agree with the garnishee's position, the Department may proceed to hold it liable for the tax using the Department's administrative assessment authority as provided in G.S. 105-241.9.

The new law requires that a letter of release be sent to the garnishee anytime a garnishment is paid in full or released for other reasons. Identifying information, including the taxpayer's name, address and full social security or federal identification number must be included in the letter.

(Effective January 1, 2008; SB 242, s. 30, S.L. 07-491.)

G.S. 105-243 - Taxes Recoverable by Action:

This statute provides a method for the Department to seek a judgment issued by a court to facilitate collection of a tax liability.

Under old law, the Secretary could bring court action against a corporation that failed to pay taxes, fees, or penalties. Prior to bringing suit, the Secretary was required to issue a civil execution to the sheriff in the county where the corporation was based or held property. If the sheriff returned the execution without recovering the debt, the Secretary could then request the Attorney General's office to bring suit against the company.

The changes simplify and modernize the language of the statute and conforms it to other changes to Article 9 of Chapter 105. Under prior law, only corporate entities were subject to action under the statute. This change extends the Secretary's authority to bring suit against all taxpayer entities, including corporations, individuals, and partnerships. It no longer requires the issuance of a civil execution prior to seeking the judgment. It specifies that this judgment is not subject to a claim for homestead exemption. It also provides the courts in which the Attorney General may bring the action.

(Effective January 1, 2008; SB 242, s. 33, S.L. 07-491.)

G.S. 105-243.1 - Collection of Tax Debts:

This statue establishes the Collection Assistance Fee and provides how it is to be used. It also allows the Department to outsource debts owed by non-resident taxpayers. The statue was revised to conform to other changes to Article 9 of Chapter 105.

(Effective January 1, 2008; SB 242, s. 33, S.L. 07-491.)

G.S. 105-253(b) - Responsible Officers:

This statute allows the Department to transfer liabilities incurred by a responsible officer of a corporation or limited liability company.

The statute was modified to conform to the new assessment and review process. It also updates the definition of "responsible officer" to include the title "chief financial officer."

(Effective January 1, 2008; SB 242, s. 34, S.L. 07-491.)

G.S. 105-256 – Change to Caption and Additional Requirement:

The caption of this statute was amended to call the information required to be prepared by the Secretary of Revenue publications instead of reports. Subdivision (a)(9) was added to require the Department to publish final decisions from contested tax cases to conform to the new appeals process explained below.

Caption change effective January 1, 2008; SB 242, s. 35, S.L. 07-491; additional publication requirement effective January 1, 2008; SB 242, s. 36, S.L. 07-491.)

G.S. 105-258(a) – Clarifying:

This statute was amended to clarify that the Secretary may examine data and summons persons for a tax as defined in G.S. 105-228.90(b)(7). Prior to this change the statutes referred to this Subchapter, which included only Subchapter I.

(Effective August 31, 2007; SB 540, s. 15, S.L. 07-527.)

G.S. 105-258.1(a) – Conforming Change:

This subsection was amended to conform to the new assessments, refunds, and appeals processes explained below.

(Effective January 1, 2008; SB 242, s. 37, S.L. 07-491.)

G.S. 105-259(b)(1) – Disclosure:

This subdivision was amended to permit the Department to disclose tax information if ordered to do so by an administrative law judge in a contested tax case.

(Effective January 1, 2008; SB 242, s. 38, S.L. 07-491.)

G.S. 105-259(b)(7) – Disclosure:

This statute was amended to include the disclosure of tax information to the Joint Operations Center for National Fuel Tax Compliance (JOC). North Carolina is a member of the JOC whose purpose is to address fuel tax evasion across the United States.

(Effective August 31, 2007; SB 540, s. 34, S.L. 07-527.)

G.S. 105-259(b)(38) – Disclosure:

This subdivision was added to permit the Department to verify with a nonprofit organization information concerning a tax credit claimed by a taxpayer for donations to the nonprofit for acquisition or lease of renewable energy property.

(Effective January 1, 2008; SB 3, s. 13(d), S.L. 07-397.)

G.S. 105-262(a) – Conforming Change:

This subsection was amended to delete references to the Tax Review Board in the statutory language authorizing the Department to adopt rules. The Tax Review Board's authority was repealed as part of the new appeals process explained below.

(Effective January 1, 2008; SB 242, s. 39, S.L. 07-491.)

REFORM ASSESSMENTS, REFUNDS, AND APPEALS PROCESSES

Session Law 2007-491 (Senate Bill 242) recodified and revised several of the statutes within Article 9 of Chapter 105 to reform the existing assessments, refunds, and appeals processes. The new statutes are explained and the repealed statutes are identified below. In general, the effective date of these changes is January 1, 2008. If the effective date for a change is other than January 1, 2008, that effective date is identified within the explanation for that statute.

The primary changes from current law and existing administrative practice include:

- A uniform procedure for all refunds, including the statute of limitations relative to those requests and how requests for refunds are handled.
- When a federal determination has been made and the taxpayer timely notifies the Department of the federal determination, changes to the taxpayer's State tax liability are limited to those items related to the federal determination.
- The Department no longer has to issue a proposed assessment for tax reflected due by a taxpayer on a tax return but not paid. That amount is due and collectible.
- Hearings on protested assessments or denials of refund move from the Department's Administrative Hearings Officer to Administrative Law Judges at the Office of Administrative Hearings.
- Final Decisions issued subsequent to the hearing at the Office of Administrative Hearings are appealed to the Business Court or Superior Court rather than the Tax Review Board.
- The tax liability must be paid to appeal to the Business Court or Superior Court. Under prior law, the taxpayer had to either pay the tax or file a bond.

G.S. 105-241.6 – Statute of Limitations for Refunds:

Under prior law, the general statute of limitations for requesting refunds on other than constitutional grounds was found in G.S. 105-266(c) and the statute of limitations for seeking refunds on constitutional grounds, as well as any other grounds, was found in G.S. 105-267. The statute of limitations for requesting a refund under G.S. 105-266(c) was the later of (i) three years after the date set by the statute for the filing of the return or (ii) six months of the payment of the tax alleged to be an overpayment. An agreement by a taxpayer to extend the time in which the Department could propose an assessment automatically extended the time in which the taxpayer could request a refund. Exceptions to the general rule applied to overpayments resulting from worthless debts or securities, capital loss and net operating loss carrybacks, and federal determinations. The statute of limitations for requesting a refund under G.S. 105-267 was 30 days after payment for a tax levied in Articles 2A, 2C, or 2D of Chapter 105 and three years for all other taxes.

New G.S. 105-241.6 incorporates the statutes of limitations on refunds in G.S. 105-266 and G.S. 105-267 into one statute. The general statute of limitations for requesting a refund is now the same for any type of claim for refund. It is the later of (i) three years after the due date of the return or (ii) two years after payment of the tax. The same exceptions as provided for in former G.S. 105-266(c) still apply.

***Note**: If a taxpayer's right to receive a refund had expired under the prior six-month statute of limitations, the new two-year statute of limitations does not reopen the taxpayer's right to a refund.*

G.S. 105-241.7 – Procedure for Obtaining a Refund:

Under prior law, refunds were issued if the Secretary discovered an overpayment or the taxpayer requested a refund under G.S. 105-266 or demanded a refund under G.S. 105-267 and the Department determined that the taxpayer had overpaid the tax. The discovery by the Department or the request or demand for refund by the taxpayer had to be within the applicable statute of limitations. The Department could not refund any overpayment before the taxpayer filed the final return for the tax period or any overpayment that was (i) required to be set off under Chapter 105A, the Setoff Debt Collection Act, (ii) elected by the taxpayer to be applied to another purpose, such as the next year's estimated tax or the Wildlife Conservation Account (applicable only to income tax overpayments), less than $1.00 if an individual income tax refund or $3.00 if any other kind of tax. The law placed no time limitations on the Department's review of requests for refunds under G.S. 105-266. Demands for refund under G.S. 105-267 were considered denied if not refunded within 90 days.

Subsection (a) of new G.S. 105-241.7 requires the Department to refund an overpayment it discovers if the statute of limitations has not expired.

Subsection (b) permits a taxpayer to request a refund of an overpayment by filing an amended return reflecting the overpayment or filing a claim for refund that identifies the taxpayer, the type and amount of tax overpaid, the applicable tax period, and the basis for the claim within the statute of limitations. Identifying the basis for the claim does not limit the taxpayer from changing the basis.

Subsection (c) requires the Department to, within six months of receiving the amended return or demand for refund, either (i) refund the amount requested; (ii) adjust the amount requested, refund the adjusted amount, and provide the taxpayer with a reason for the adjustment; if the refund is less than requested, the adjusted refund is considered a notice of denial for the amount of the requested refund that was not refunded; (iii) deny the refund in its entirety and send the taxpayer a notice of proposed denial; or (iv) request additional information concerning the request for refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and issue a notice of proposed denial. If the taxpayer provides the requested information, the Department must take one of the actions listed above within the latter of (i) the remainder of the six-month period; (ii) 30 days after receiving the information; (iii) a time period mutually agreed upon by the Department and the taxpayer. If the Department does not take one of these actions within the required time, the inaction is considered to be a proposed denial of the requested refund.

Subsection (d) requires a notice of a proposed denial to contain the following information: (i) the basis for the proposed denial (the stated basis for the denial does not limit the Department from changing the basis) and (ii) the circumstances under which the proposed denial will become final.

Subsection (e) contains the same restrictions on issuing refunds as provided for in former G.S. 105-266(a).

Subsection (f) provides that a proposed denial of a refund by the Department is presumed to be correct. A taxpayer receiving a refund for a tax period is not absolved from any tax liability that may exist for that tax period.

Note: *If a taxpayer has a pending refund claim as of January 1, 2008, the Department has six months from January 1 to take action on the refund claim before the inaction is considered a proposed denial of the requested refund.*

G.S. 105-241.8 – Statute of Limitations for Assessments:

Under prior law (G.S. 105-241.1(e)), the general statute of limitations for proposing assessments was three years after the later of (i) the date the taxpayer filed an application for a license or a return or (ii) the date the application or return was required by law to be filed. A taxpayer could agree to extend the time in which the

Department could assess a taxpayer for an underpayment. Exceptions to the general rule applied to assessments resulting from federal determinations, forfeiture of a tax credit or tax benefit, the subsequent recognition of unrecognized gain from involuntary conversion of property, sales of personal residences, or for failure to file a return or for filing a false return.

New G.S. 105-241.8 includes all of the provisions of former G.S. 105-241.1(e) except for the agreement to extend the time in which the Department can propose an assessment and the exception related to sales of personal residences. The extension of time provision is included in new G.S. 105-241.9(b). The federal provisions addressing when an assessment could be made with regard to sales of personal residences had been repealed in earlier years so the provision was no longer applicable for State tax purposes.

G.S. 105-241.9 – Procedure for Proposing an Assessment:

Under prior law, the procedure for proposing an assessment was included in G.S. 105-241.1(a). If the Department discovered that any tax was due, the Department was required to notify the taxpayer in writing of the kind and amount of tax due. The notice had to describe the basis for the proposed assessment and identify the amounts of any tax, interest, and penalties included in the proposed assessment. The notice also had to advise the taxpayer that the proposed assessment would become final unless the taxpayer timely requested a hearing. The proposed assessment had to be based on the best information available and was presumed to be correct.

New G.S. 105-241.9 includes the provisions of former G.S. 105-241.1(a) and the provision of former G.S. 105-241.1(e) regarding an agreement to extend the time in which the Department can propose an assessment. Subsection (a) authorizes the Department to propose an assessment for tax due. The proposed assessment must be based on the best information available and is presumed to be correct.

Subsection (b) requires the Department to propose an assessment within the statute of limitations for proposed assessments (see G.S. 105-241.8 above) unless the taxpayer waives the limitations period in writing. The waiver can be for either a definite or indefinite time. The Department may then propose an assessment at any time within the extended time.

Subsection (c) requires the Department to give a taxpayer a written notice of a proposed assessment. The notice must contain (i) the basis for the proposed assessment (the statement of the basis does not limit the Department from changing the basis); (ii) the amount of tax, interest, and penalties, stated separately, and (iii) the circumstances under which the proposed assessment will become final and collectible.

G.S. 105-241.10 – Limit on Refunds and Assessments After a Federal Determination:

Current law (G.S. 105-130.20 for corporate income tax, G.S. 105-159 for individual income tax, G.S. 105-163.6A for withholding tax, and G.S. 105-197.1 for gift tax) permits the Department, when made aware of a correction or determination of a taxpayer's federal tax liability by the Internal Revenue Service, to consider all available evidence to determine the taxpayer's correct State tax liability. The term "all available evidence" means evidence of any kind from any source, whether or not the evidence was considered in the federal correction or determination.

New G.S. 105-241.10 places limitations on the amount of refund or proposed assessment that can be issued when the Department is notified by a taxpayer of a federal correction or determination and the general statute of limitations has expired. If a taxpayer timely files a return reflecting a federal determination that affects the amount of State tax payable, the taxpayer is entitled to a refund only if the refund is the result of adjustments related to the federal determination. Likewise, the taxpayer is liable for additional tax only if the additional tax is the result of adjustments related to the federal determination. For example, an individual income tax return for a taxpayer whose exemption for a dependent is disallowed by the Internal Revenue Service could also be adjusted to disallow the credit for children for the same dependent but could not be adjusted to disallow an interest expense deduction. A corporate income tax return for a corporation whose gross receipts are increased by the Internal Revenue Service could also be adjusted to adjust the apportionment factor for the increased receipts but could not be adjusted to disallow tax credits.

***Note**: The change in this section is effective for taxable years beginning on or after January 1, 2007.*

G.S. 105-241.11 – Requesting Review of Proposed Denial of Refund or Proposed Assessment:

Prior law did not statutorily authorize taxpayers to request a review of proposed assessments or adjustments to refunds. Under prior law (G.S. 105-241.1(c) for proposed assessments, G.S. 105-266.1(a) for refunds requested), a taxpayer who objected to a proposed assessment in writing within 30 days or whose refund requested was reduced or denied was entitled to a hearing before the Department's Hearings Officer. It was the Department's administrative practice to review the proposed assessments or adjustments to refunds upon receipt of the taxpayer's request for hearing, to correspond with the taxpayer to explain the adjustments and to seek additional information from the taxpayer, either in writing or via an informal conference, in an attempt to resolve the taxpayer's objections prior to proceeding to a hearing.

Subsection (a) of new G.S. 105-241.11 authorizes a taxpayer who objects to a proposed assessment or a proposed denial of refund to request the Department to review the proposed action. The request for review must be filed within 45 days after (i) the date the notice of the proposed assessment or the proposed denial of refund was

mailed to the taxpayer, if delivered by mail; (ii) the date the notice of the proposed assessment or the proposed denial of refund was delivered to the taxpayer, if delivered in person; or (iii) the date that inaction by the Department on a request for refund was considered a proposed denial of the refund (see G.S. 105-241.7(c)).

Subsection (b) provides that a request for the Department to review a proposed assessment or a proposed denial of refund is considered filed (i) for a request that is delivered in person, the date it is delivered; or (ii) for a request that is not delivered in person, the date the Department receives it.

G.S. 105-241.12 – Result When Taxpayer Does Not Request a Review:

Under former law (G.S. 105-241.1(d)), a proposed assessment became final without further notice if the taxpayer did not timely request a hearing. A taxpayer who did not timely request a hearing on a proposed assessment could still obtain a hearing by paying the liability in full and then requesting a refund. The law contained no time limitation for requesting a hearing on a denied or reduced refund if the request for refund had been timely filed.

Subsection (a) of new G.S. 105-241.12 provides that a proposed denial of a refund becomes final and is not subject to further administrative or judicial review if the taxpayer does not file a timely request for the Department to review the proposed denial. A taxpayer whose proposed denial of a refund becomes final may not file another amended return or refund claim to obtain the denied refund.

Subsection (b) provides that a proposed assessment becomes final and is not subject to further administrative or judicial review if the taxpayer does not file a timely request for the Department to review the proposed assessment. Upon payment of the tax, the taxpayer may request a refund of the tax paid. If a proposed assessment becomes final because the taxpayer does not file a timely request for a review, the Department must send the taxpayer a notice of collection before it attempts to collect the tax. The notice must contain (i) a statement that the proposed assessment is final and collectible; (ii) the amount of tax, interest, and penalties due; and (iii) an explanation of the collection options available to the Department if the taxpayer does not pay the liability reflected on the notice and any remedies available to the taxpayer concerning these collection options.

***Note**: If a taxpayer's right to request a hearing on a proposed assessment had expired before January 1, 2008 because the taxpayer did not submit a written request for a hearing within 30 days, the extended period of time to request a review effective January 1, 2008 (45 days) does not apply because that proposed assessment became final prior to January 1, 2008.*

G.S. 105-241.13 – Action on Request for Review:

Prior law did not statutorily address the Department's actions on requests for reviews.

Subsection (a) of new G.S. 105-241.13 requires the Department, when it receives a timely request for a review of a proposed assessment or proposed denial of a refund, to conduct a review of the proposed action and either (i) grant the refund or remove the assessment; (ii) schedule a conference with the taxpayer; or (iii) request additional information from the taxpayer concerning the requested refund or proposed assessment.

Subsection (b) requires the Department to schedule a conference with a taxpayer if it's review of a proposed assessment or proposed denial of a refund does not result in granting the refund requested or removing the assessment. The conference may either be face-to-face or by telephone. The Department must give the taxpayer 30 days notice of the time and place set for the conference unless the Department and the taxpayer agree to a conference in less than 30 days. The purpose of the conference is for the parties to attempt to resolve the case. The conference is informal; no testimony under oath is taken; the rules of evidence do not apply; and the taxpayer may present any objections to the proposed action. The taxpayer may designate a representative to act on the taxpayer's behalf at the conference.

Subsection (c) provides that, after the Department conducts a conference on a proposed assessment or proposed denial of refund, the Department and the taxpayer either (i) agree on a settlement; (ii) agree that additional time is needed to resolve the issue; or (iii) are unable to resolve the taxpayer's objection to the proposed action. If a taxpayer fails to attend the conference without notifying the Department, the Department and the taxpayer are considered to be unable to resolve the issue.

G.S. 105-241.14 – Final Determination after Department Review:

Prior law did not statutorily address the Department's actions on requests for reviews. If the Department and the taxpayer were unable to resolve the issues, the next step was for the taxpayer to proceed to a hearing before the Department's Hearings Officer or to pay the tax and file suit to recover the alleged overpayment.

New subsection (a) of G.S. 105-241.14 requires the Department to issue a notice of final determination if the Department and the taxpayer are unable to resolve the taxpayer's objection to a proposed denial of refund. The notice must state the basis for the final determination and inform the taxpayer of the procedure for contesting the determination. The statement of the basis does not limit the Department from changing the basis.

Subsection (b) requires the Department to issue a notice of final determination if the Department and the taxpayer are unable to resolve the taxpayer's objection to a proposed assessment. The

notice must contain (i) the basis for the determination; such basis may be stated on the notice or in a separate document (the statement of the basis does not limit the Department from changing the basis); (ii) the amount of the tax, interest, and penalties due; (iii) the procedure the taxpayer must follow to contest the final determination; (iv) a statement that the amount due stated on the notice is collectible if the taxpayer does not contest the final determination; and (v) an explanation of the collection options available to the Department if the taxpayer does not pay the liability reflected on the notice and any remedies available to the taxpayer concerning these collection options.

Subsection (c) requires the Department to conclude its review of the proposed assessment or proposed denial of a refund and to issue a final determination if needed within nine months of the date the taxpayer filed the request for review. The Department and the taxpayer may mutually agree to extend the time limit. Failure by the Department to issue a final determination within nine months does not affect the validity of a proposed assessment.

***Note**: Timely protests of proposed assessments or denials of refunds filed before January 1, 2008 and pending as of that date will be considered requests for review under the new law without the taxpayer having to submit a new request. The Department has nine months from January 1, 2008 to conclude its review of the proposed assessment or proposed denial of a refund and to issue a final determination if needed.*

G.S. 105-241.15 – Contested Case Hearing on Final Determination:

Under prior law (G.S. 105-241.1(c) for proposed assessments, G.S. 105-266.1(a) for refunds requested), administrative tax hearings were heard before the Department's Hearings Officer.

New G.S. 105-241.15 provides that a taxpayer who disagrees with a notice of final determination issued by the Department may petition for a contested case hearing before an administrative law judge at the Office of Administrative Hearings pursuant to Article 3 of Chapter 150B of the General Statutes. A taxpayer may not petition for a contested case hearing until the Department has issued a notice of final determination. Pursuant to G.S. 150B-23(f), the petition for a contested case hearing must be filed within 60 days of the date the Department mails or personally delivers the notice of final determination. The taxpayer does not have to pay the additional tax due prior to the contested case hearing.

For information about the contested tax case hearings process, please consult the Office of Administrative Hearings web page at http://www.ncoah.com.

G.S. 105-241.16 – Judicial Review of Decision After Contested Case Hearing:

Under former law (G.S. 105-241.2(a) for proposed assessments, G.S. 105-266.1(c) for refunds requested), a taxpayer who did not agree with the Hearing Officer's Final Decision could appeal to the Tax Review Board without having to pay the tax or could pay the tax and file suit in Superior Court. A taxpayer who appealed to the Tax Review Board and who did not receive a favorable decision from the Tax Review Board could pay the tax or file a bond with the Department and appeal that decision to Superior Court.

New G.S. 105-241.16 provides that a taxpayer who receives an unfavorable decision in a contested case hearing may appeal the decision by filing a petition for judicial review with the Superior Court of Wake County and a Notice of Designation to designate the case as a mandatory complex business case to be heard by the Business Court. The appeal must be filed within 30 days after receipt of the final decision for the contested case hearing. The taxpayer must pay the tax liability set forth in the final decision to appeal.

G.S. 105-241.17 – Civil Action Challenging Statute as Unconstitutional:

Under prior law, neither the Department's Hearings Officer nor the Tax Review Board could render a decision on the constitutionality of a statute.

New G.S. 105-241.17 provides that a taxpayer who claims that a tax statute is unconstitutional may bring a civil action with the Superior Court of Wake County and filing a Notice of Designation to designate the case as a mandatory complex business case to be heard by the Business Court. To bring a civil action, the taxpayer must have (i) exhausted the prehearing remedy by receiving a notice of final determination from the Department; (ii) commenced a contested case at the Office of Administrative Hearings; (iii) received a dismissal notice from the Office of Administrative Hearings; (iv) paid the tax, penalties, and interest due pursuant to the Department's notice of final determination; and (v) filed the civil action within two years of the dismissal.

G.S. 105-241.18 – Reserved for Future Law:

G.S. 105-241.19 – Declaratory Judgments, Injunctions, and Other Actions Prohibited:

Prior law did not address declaratory judgments or injunctions.

New G.S. 105-241.19 provides that the remedies in G.S. 105-241.11 through G.S. 105-241.17 are the exclusive remedies for disputing the denial of a requested refund, the taxpayer's liability for a tax, or the constitutionality of a tax statute. All other actions, including a declaratory judgment and an injunction to prevent the collection of a tax, are barred.

G.S. 105-241.20 – Delivery of Notices to the Taxpayer:

Under prior law (G.S. 105-241.1(b)), the Department was required to deliver a proposed assessment notice to a taxpayer either in person or by U.S. mail sent to the taxpayer's last known address. A notice mailed to a taxpayer was presumed to have been received by the taxpayer unless the taxpayer made an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer made an affidavit, the notice was considered delivered on the date of the affidavit. The law did not address delivery of notices of proposed denials of refund or final assessments.

New G.S. 105-241.20 includes the provisions of former G.S. 105-241.1(b) with respect to proposed assessments and extends those provisions to a proposed denial of refund, a notice of collection, and a final determination.

G.S. 105-241.21 – Interest on Taxes:

Under prior law (G.S. 105-241.1(i) for assessments and G.S. 105-266(b) for refunds, the Department, on or before June 1 and December 1 of each year, established the interest rate to be in effect during the six-month period beginning on July 1 and January 1, respectively. The Department was required to give due consideration to current market conditions and to the rate to be in effect on that date pursuant to the Internal Revenue Code while determining the rate. If no new rate was established, the rate in effect for the previous six-month period remained in effect. The rate could not be less than 5% nor exceed 16%.

Interest accrued on an underpayment of tax, exclusive of any penalties assessed, from the date set by statute for payment of the tax until the tax was paid. Interest accrued on an overpayment of income tax or gross premiums tax beginning 45 days after the later of (i) the date the final return was filed; (ii) the date the final return was due to be filed; or (iii) the date of the overpayment, determined in accordance with Code sections 6611(d), (f), (g) and (h). Interest accrued on an overpayment of any other type of tax beginning 90 days after the date the tax was paid.

For purposes of calculating interest, a refund was considered paid on a date determined by the Department that was no sooner than five days after the refund check was mailed. A refund set off against a debt pursuant to the Setoff Debt Collection Act (Chapter 105A) was considered paid five days after the Department mailed the taxpayer a notice of the setoff unless the agency that requested the setoff returned the refund to the taxpayer. In that case, the refund was considered paid five days after the agency mailed the taxpayer the refund check.

Subsection (a) of new G.S. 105-241.21 incorporates the provisions of prior law about establishing the interest rate without change.

Subsection (b) incorporates the provisions of prior law regarding the accrual of interest on an underpayment of tax without change.

Subsection (c) incorporates the provisions of prior law regarding the accrual of interest on an underpayment of tax with one change. As amended, a franchise tax payable on an annual basis now accrues interest beginning 45 days after the latter of the three tests instead of 90 days after the date the tax was paid.

Subsection (d) incorporates the provisions of prior law regarding when a refund is considered paid without change.

G.S. 105-241.22 – Collection of Tax:

Under prior law, the Department could collect a tax if the taxpayer did not timely (i) request a hearing with respect to a proposed assessment; (ii) petition the Tax Review Board for review of the Hearings Officer's Final Decision in an administrative tax hearing; or (iii) pay the tax after the Tax Review Board issued its decision on the appeal of the Hearings Officer's Final Decision unless the taxpayer filed a bond with the Department and appealed the decision to Superior Court. If the taxpayer filed a return showing additional tax due but did not pay the tax, the Department could not immediately collect the tax; instead, the Department was required to propose an assessment for the liability.

New G.S. 105-241.22 provides that the Department can collect a tax when (i) a taxpayer files a return showing tax due on the return and does not pay the amount shown due; (ii) the Department sends a notice of collection after the taxpayer does not file a timely request for a review of a proposed assessment; (iii) the taxpayer and the Department agree on a settlement concerning the amount of tax due; (iv) the Department issues a notice of final determination with respect to a proposed assessment and the taxpayer does not file a timely petition for a contested case hearing; (v) a final decision is issued on a proposed assessment of tax after a contested case hearing; or (vi) the Office of Administrative Hearings dismisses a petition for a contested case for lack of jurisdiction because the issue is the constitutionality of a statute.

G.S. 105-241.23 – Jeopardy Assessment and Collection:

Under prior law (G.S. 105-241.1(g)), the Department could, within the statute of limitations, immediately assess any tax if the Department determined that collection of the tax was in jeopardy and the immediate assessment was necessary to protect the State's interest. The Department was required to give the taxpayer a notice of proposed assessment within 30 days after the jeopardy assessment. Within 5 days after issuing the jeopardy assessment that was not the result of a criminal investigation or was not for a liability for the unauthorized substance tax, the Department was required to give the taxpayer a written statement of the information upon which the Department relied in making the assessment. The taxpayer could request the Department to review the jeopardy assessment by filing a request within 30 days of receipt of the written statement or within 30 days of when the statement was due. If the taxpayer made a timely request for review, the Department was required to determine if making the jeopardy assessment was

reasonable under all of the circumstances and whether the amount of the tax was reasonable. The Department had to give the taxpayer written notice of its determination within 30 days of the request for review.

Under prior law (G.S. 105-241.5)), the taxpayer could, within 90 days after the earlier of the date the taxpayer received the Department's determination or the date the taxpayer should have received the determination, bring a civil action in Superior Court seeking review of the jeopardy action.

New G.S. 105-241.23(a) incorporates the provisions of former G.S. 105-241.1(g) regarding the authority to issue a jeopardy assessment and the requirement to issue a notice of proposed assessment within 30 days. The subsection also authorizes the Department to use any of the collection remedies in G.S. 105-242 and provides that the Department does not have to wait any period of time after taking the jeopardy action to use those remedies.

Subsection (b) incorporates the provisions of former G.S. 105-241.1(g) regarding the requirement to provide a written statement of the basis for the jeopardy action within 5 days and the authority of the taxpayer to ask the Department to review the jeopardy action.

Subsection (c) incorporates the provisions of former G.S. 105-241.5.

(G.S. 105-241.10 is effective for taxable years beginning on or after January 1, 2007; G.S. 105-241.6 through .9 and G.S. 105-241.11 through .23 are effective January 1, 2008. The procedures for review of disputed tax matters apply to assessments of tax that are not final as of January 1, 2008 and to claims for refund pending on or filed on or after January 1, 2008. Matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 before January 1, 2008 are not affected by the enactment of the new appeals process; SB 242, s. 1, S.L. 07-491.)

Statutes Repealed to Conform to the New Processes for Assessments, Refunds, and Appeals:

The following statutes in Article 9 of Chapter 105 were repealed to conform to the new processes for assessments, refunds, and appeals enacted in G.S. 105-241.6 through G.S. 105-241.23:

G.S. 105-239	G.S. 105-241.1	G.S. 105-241.2
G.S. 105-241.3	G.S. 105-241.4	G.S. 105-241.5
G.S. 105-266	G.S. 105-266.1	G.S. 105-267
G.S. 105-269.2		

(Effective January 1, 2008; SB 242, s. 2, S.L. 07-491.)