

2008

NORTH CAROLINA
DEPARTMENT OF REVENUE

**TAX LAW
CHANGES**

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2008 TAX LAW CHANGES

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FOR
TAX ADMINISTRATION**
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INTRODUCTION

This year, yet again, we saw a number of major tax policy decisions at the General Assembly. On the individual income front, the North Carolina Earned Income Tax Credit (EITC) was increased from 3.5% to 5.0% of the federal EITC. Publicly-traded partnerships were also exempted from the informational return and payment requirements previously found in G.S. 105-154(c) and (d). The overall cap on payments under the Qualified Business Venture Tax Credit was increased from \$7.0 to \$7.5 million. The state-level gift tax was also repealed, but only applies to gifts made after January 1, 2009.

There was also a great deal of activity related to tax credits. Both the State Port and Film Industry credits were modified and extended, while the credit for investment by small business employers in their employees' health benefits was also extended. In addition, a section was added to Article 3B to provide a tax credit to biodiesel providers that produce at least 100,000 gallons of biodiesel during a taxable year. Sunset dates for the Mill Rehabilitation Tax Credit, the Research and Development Tax Credit, and the Low-Income Housing Tax Credits were also extended. However, one should check the new sunset dates carefully as those dates vary from credit to credit.

While the policy decisions noted above are significant to affected taxpayers, much of the tax discussion at the General Assembly this year focused on sales tax issues. Included as provisions in the final budget document, the legislature this year passed the "Small Business Protection Act." This legislation provided substantial, retroactive relief to taxpayers with liabilities related to what the General Assembly deemed to be "complex sales tax issues." In addition, new requirements were added for the Department of Revenue related to the documentation of some types of oral advice, and new authority was granted to the Secretary to reduce taxpayer liabilities when such liabilities create an "unjust result."

Many other technical and more complex changes were made and are documented in the pages of this guide. I hope you find this information of value to you in your work related to North Carolina's tax laws.

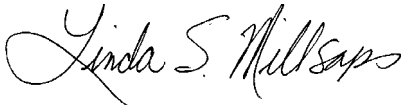


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ESTATE TAX

G.S. 105-32.2(b) – Modify Estate Tax Law

This subsection was amended to modify the formula for calculating the estate tax when property is located in a state other than North Carolina and the decedent was a resident of this State at the time of death. The amount of estate tax imposed under this section is now reduced by an amount computed by multiplying the state death tax credit that would have been allowed against the federal taxable estate as of December 31, 2001 by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. Under prior law, the amount of tax due was reduced by the lesser of the amount of death tax paid the other state or the fraction described above.

(Effective July 16, 2008 and applies retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007; HB 2436, ss. 28.17 (a) and (b); S.L. 08-107.)

INDIVIDUAL INCOME TAX

G.S. 105-134.2(a) – Repeal of the 8.25% Tax Rate

This subsection was amended by Session Law 2006-66 to repeal the 8.25% individual income tax rate that applied to higher income taxpayers in two phases. The rate was reduced to 8% for tax years beginning on or after January 1, 2007 and to 7.75% for tax years beginning on or after January 1, 2008.

(SB 1741, ss. 24.2 (a), (b), and (c), S.L. 2006-66.)

G.S. 105-134.6(b) (17a)- Future Deduction for Special Accelerated Depreciation Add- Back

This subdivision was added to provide a deduction from future income tax returns for the 50% additional first-year depreciation deduction required to be added to federal taxable income under G.S. 105-134.6(c)(8a). A taxpayer may deduct 20% of the total amount of accelerated depreciation added to federal taxable income in the tax year 2008 in each of the first five taxable years beginning on or after January 1, 2009.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.1. (h), S.L. 08-107.)

G.S. 105-134.6(b)(19)
- Tax Deduction for the Sale of a Manufactured Home Community to Manufactured Homeowners

This subdivision was added to provide a deduction from federal taxable income for 5% of the gross purchase price of a qualified sale of a manufactured home community. To qualify, the sale must be a one-time event to a group composed of a majority of the community's leaseholders or to a nonprofit organization that represents the group of leaseholders and notice of the sale must be given to the NC Housing Finance Agency pursuant to G.S. 42-14.3.

(Effective for taxable years beginning on or after January 1, 2008, and expires for taxable years beginning on or after January 1, 2015; HB 2436, s. 28.27(b), S.L. 08-107.)

G.S. 105-134.6(c)(5b)
- Addition to Federal Taxable Income for Amounts Donated to Nonprofit Organization or Unit of State or Local Government to Enable the Nonprofit or Government Unit to Acquire Renewable Energy Property

This subdivision was added by the 2007 Legislature 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. The 2008 Legislature amended this subdivision to conform to the amendment to G.S. 105-129.16H that expanded the credit to include donations to State or local governments.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.25(c), S.L. 08-107.)

G.S. 105-134.6(c)(8a)
- Special Accelerated Depreciation Add-Back

This subdivision was added to require a taxpayer to add to federal taxable income a percentage of the 50% first-year bonus depreciation deduction allowed for federal income tax purposes under Section 168(k) of the Internal Revenue Code under the Economic Stimulus Act of 2008. The applicable percentage is 85% of the bonus depreciation for the tax year 2008. Any taxpayer who claimed the bonus depreciation for federal purposes for the tax year 2007 and whose North Carolina return also reflected that deduction must also add back 85% of the deduction claimed for the tax year 2007 on the 2008 tax return. This adjustment does not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.1. (f), S.L. 08-107.)

G.S. 105-151.22 – State Ports Tax Credit Reporting Requirements Amended and Tax Credit Extended

This subsection was amended to expand the information the Department is required to publish by May 1 of each year concerning the State Ports Tax Credit. Additional information includes the amount of charges attributable to imports and the amount of charges attributable to exports.

This subsection was amended to extend the sunset of the credit to taxable years beginning on or after January 1, 2014 from January 1, 2009.

(Effective July 16, 2008; HB 2436, ss. 28.5. (c) and (d); S.L. 08-107.)

*G.S. 105-151.29 –
Expand Film Industry
Credit and Extend
Sunset*

This section was amended to expand the expenses of a production company that qualify for the credit. Under prior law, compensation paid to a highly compensated individual (defined as an individual who directly or indirectly receives compensation in excess of one million dollars) was not a qualifying expense. As amended, compensation up to one million dollars constitutes a qualifying expense. Amounts in excess of one million dollars are non-qualifying. Additionally, the cost of production-related insurance coverage constitutes a qualifying expense as long as the coverage is not purchased from a related member as defined for corporate income tax purposes.

Former subsection (j) was recodified as subsection (k). New subsection (j) was added to require a taxpayer to notify the Division of Tourism, Film, and Sports Development Division of the Department of Commerce of its intent to claim a credit and to provide the following information to claim a credit:

- The title of the production
- The name of the production company
- A financial contact for the production company
- The proposed dates of which the production company plans to begin filming
- Any other information required by the Division.

Productions receiving production credits must acknowledge in the production credits both the NC Film Office and the regional film office responsible for the geographic area in which the filming occurred.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, ss. 28.24(a), (j), and (k); S.L. 08-107.)

*G.S. 105-151.31 –
Refundable Earned
Income Tax Credit*

This section was added by the 2007 Session Laws 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.

(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.)

This subsection was subsequently amended by the 2008 Session Laws to increase the earned income tax credit from 3.5% to 5% of the amount of credit the individual qualified for under Section 32 of the Code. This change is effective for taxable years beginning on or after January 1, 2009.

(Effective for taxable years beginning on or after January 1, 2009; HB 2436, s. 28.9. (a), S.L. 08-107.)

**G.S. 105-154(e) –
Publicly Traded
Partnerships**

This subsection was added to provide an exception to the information return and payment requirements under G.S. 105-154(c) and (d) for a publicly traded partnership that is described in Section 7704(c) of the Code. The information return is limited to partners whose distributive share of the partnership's net income during the tax year was more than five hundred dollars (\$500.00), and the payment requirements do not apply.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.8. (a), S.L. 08-107.)

**G.S. 105-163.012(b)
– Increase Qualified
Business Venture Tax
Credit Cap**

This subsection was amended to increase the total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year from \$7,000,000 to \$7,500,000.

(Effective for investments made on or after January 1, 2008; HB 2436, s. 28.26. (a), S.L. 08-107.)

GIFT TAX

**G.S. 105-188 –
Repeal Gift Tax Law**

The gift tax was repealed effective for gifts made on or after January 1, 2009.

(Effective January 1, 2009 and applies to gifts made on or after that date; HB 2436, s. 28.18. (a), S.L. 08-107.)

PRIVILEGE TAXES

G.S. 105-41(a)(12) – Home Inspector Privilege License

This subdivision was added to impose an annual privilege license on home inspectors licensed by the North Carolina Home Inspector Licensure Board, a division of the NC Department of Insurance, under Article 9F of Chapter 143. Although the State privilege license is due by July 1, 2008, home inspectors will have until October 1, 2008 to obtain the privilege license without interest or penalty. The tax for the license is \$50. Cities that impose a license tax on home inspectors may collect the tax for fiscal year 2008-2009 but will be prohibited from doing so on or after July 1, 2009.

(Effective August 9, 2008 and applies to taxable years beginning on or after July 1, 2008; HB 2558, S.L. 08-206.)

G.S. 14-344.1 – Internet Sale of Admission Tickets in Excess of Printed Price

This new statute was enacted to legislate the activity of reselling tickets to admissions over the Internet at more than the face value of the ticket. Resale is permissible as long as the venue where the event will be held does not prohibit the resale of the ticket and the seller of the ticket guarantees that the purchaser will be refunded the purchase price if the event is cancelled, if the purchaser is denied access to the event, or if the ticket is not delivered to the purchaser in accordance with the agreement, resulting in the purchaser missing the event. The statute does not apply to student tickets for sporting events. The amusement gross receipts tax is not imposed on the resale of tickets. The Internet seller of the tickets is required to file a monthly report with the Department of Revenue. Required information includes:

- Gross receipts derived from the resale of tickets, not including the face value of the ticket,
- Identification of the event and venue where the event will be held,
- Identity of the person from whom the reseller purchased the tickets,
- Acquisition price of the tickets,
- The price received by the reseller for the tickets,
- Identity and address of the purchaser of the tickets, if the purchaser is also a reseller,
- Any other information required by the Secretary of Revenue.

(Effective August 1, 2008 and expires June 30, 2009; SB 1407, s. 1, S.L. 08-158.)

TOBACCO PRODUCTS TAX

*G.S. 105-113.39 –
Refund of Unsaleable
Other Tobacco Product*

Under prior law, a wholesale dealer or retail dealer could return stale or otherwise unsaleable cigars to the manufacturer and receive a refund from the Department of the excise tax previously paid on the cigars. The law did not provide a refund for any other returned stale or otherwise unsaleable tobacco products. As amended, excise tax may be refunded on the return of any stale or unsaleable tobacco products.

Subsection (a) was rewritten to remove language that stated the 2% discount allowed for the timely filing of a report and the timely payment of tax covered losses due to damage to tobacco products.

Subsection (b) was rewritten to provide that the refund provision applied to any tobacco product instead of just cigars.

(Effective October 1, 2008 and applies to products returned on or after that date; HB 2530, s. 4, S.L. 08-207.)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES

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

This section was amended to increase the amount of wine tax proceeds earmarked for the North Carolina Grape Growers Council. Under prior law, the Department of Revenue credited \$200,000 of the net proceeds of tax collected on unfortified wine to the Department of Commerce on a quarterly basis. As amended, the Department will credit quarterly an additional \$25,000 from the net proceeds of tax collected on unfortified wine for the express purpose of research and development. The original \$200,000 is now designated for industry promotion.

(Effective October 1, 2008; HB 2436, s. 13.6A, S.L. 08-107.)

FRANCHISE TAX

*G.S. 105-114(b)(2) –
Definition of
Corporation Expanded*

This section was amended by S.L. 06-66 to include in the definition of “corporation” an LLC that elects to be treated as a C-Corporation. The purpose of the change was to close the loophole that permitted an entity to elect corporate status for federal income tax purposes

and avoid franchise tax liability imposed under G.S. 105-122. By specifying “C-Corporation,” the statute left open the possibility for an LLC to elect S-Corporation status for federal purposes and continue to avoid franchise tax liability. To close this loophole, the definition is further amended to replace the reference to “C-Corporation” with “corporation.” The amendment is effective for taxable years beginning on or after January 1, 2009. Because the general business franchise tax imposed in G.S. 105-122 is for the tax year in which the tax becomes due, this amendment will impact the franchise tax reported on the 2008 income and franchise tax return since it is due on or after April 15, 2009.

(Effective for taxable years beginning on or after January 1, 2009; HB 2436, s. 28.7(a), S.L. 08-107.)

**G.S. 105-114.1(a)(5) –
Conforming Change**

This section was amended to replace the reference to “C-Corporation” with “corporation” thereby making the statute applicable to S-Corporations as well as C-Corporations.

(Effective for taxable years beginning on or after January 1, 2009; HB 2436, s. 28.7(b), S.L. 08-107.)

**G.S. 105-122(a) –
Technical Change**

This subsection was amended by S.L. 2007-491 with the intent to conform the franchise tax due date to the change in the due date for corporate income tax returns. However, the effective date for franchise tax was incorrect. This legislation corrects the effective date such that the change in the due date of both franchise and income tax returns to the fifteenth day of the fourth month is effective for the tax return due in 2009.

(Effective for taxable years beginning on or after January 1, 2009; SB 1704, s. 3.(b), S.L. 08-134.)

**G.S. 105-122 –
Revenue Laws Study
Committee Studies**

The Revenue Laws Study Committee may consider the treatment of certain liability accounts as they relate to the computation of the franchise tax capital stock, surplus, and undivided profits base of corporations in the construction industry. This relates directly to an issue raised by a taxpayer concerning the Department’s position that billings in excess of cost do not constitute a definite and accrued legal liability. If the Committee elects to take up the matter, it will report its findings to the 2009 General Assembly.

(Effective August 4, 2008; HB 2431, s. 7.2, S.L. 08-181.)

**G.S. 105-125(b) –
Captive REITs**

Under prior law, all Real Estate Investment Trusts (REITs) were permitted to reduce the franchise tax capital stock base by the aggregate market value of its investments in stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments. This section was amended to deny that

reduction in the base to captive REITs as defined for corporate income tax purposes.

(Effective for taxable years beginning on or after January 1, 2009; HB 2436, s. 28.7(c), S.L. 08-107.)

TAX CREDITS FOR NEW AND EXPANDING BUSINESSES

*G.S. 105-129.2A(a4) –
Technical Change*

This section was amended to correct a statutory reference that erroneously referred to Article 3J as Article 3I.

(Effective July 28, 2008; SB 1704, s. 69, S.L. 08-134.)

BUSINESS AND ENERGY TAX CREDITS

*G.S. 105-129.16E(d) –
Sunset for Small
Business Employee
Health Benefits*

This subsection was amended to extend the sunset. The credit will expire for taxable years beginning on or after January 1, 2010.

(Effective July 16, 2008; HB 2436, s. 28.9A, S.L. 08-107.)

*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 –
Clarifying Change*

This section was rewritten to make the existing language subsection (a) and amended to limit the Work Opportunity Tax Credit to wages paid during the taxable year for positions located in North Carolina. A position is located in the State if more than 50% of the employee's duties are performed in this State. Under prior law, the taxpayer was eligible to claim 6% of its federal credit, regardless of where the jobs were located.

Subsection (b) was added to provide that this credit sunsets for taxable years beginning on or after January 1, 2012.

(Effective for taxable years beginning on or after January 1, 2008; SB 1704, s.2.(a), S.L. 08-134.)

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

This section was added by the 2007 Legislature 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.

Two amendments were made to this section by the 2008 Legislature. The first amendment expanded the credit to include donations to units of State or local governments. The second amendment clarifies that the credit must be taken in the 'taxable' year in which the property is placed in service.

(New credit effective for taxable years beginning on or after January 1, 2008; SB 3, s. 13(a), S.L. 07-397. Expansion of the credit for donations to State or local governments is effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.25(a), S.L. 08-107. Technical change effective July 28, 2008; SB 1704, s. 70, S.L. 08-134.)

LOW-INCOME HOUSING TAX CREDITS

*G.S. 105-129.45 –
Sunset*

This section was rewritten to extend the sunset for the credit to taxable years beginning on or after January 1, 2015 instead of January 1, 2010. The sunset applies to developments to which federal credits are allocated on or after that date.

(Effective July 16, 2008; HB 2436, s. 28.3, S.L. 08-107.)

RESEARCH AND DEVELOPMENT

G.S. 105-129.51(b) – Sunset

This section was rewritten to extend the sunset for the credits in Article 3F to taxable years beginning on or after January 1, 2014 instead of January 1, 2009.

(Effective July 16, 2008; HB 2436, s. 28.2, S.L. 08-107.)

MILL REHABILITATION TAX CREDIT

G.S. 105-129.70 – Clarifying and Technical Changes

Subsection (3) was amended to clarify that the definition of “cost certification” includes only expenses incurred with respect to repairs or alterations consistent with the Secretary of the Interior’s Standards for Rehabilitation. Subsection (4) was amended to delete the reference to “a certified rehabilitation” because that language was incorporated into subsection (3). Subsection (5)d was deleted and recodified in G.S. 105-129.71(a).

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.4, S.L. 08-107.)

G.S. 105-129.71(a) and 105-129.72(a) – Clarifying and Technical Changes

These subsections were amended to incorporate the provision which establishes the floor for cost certification at \$3,000,000 that was originally codified in G.S. 105-129.70(5)d. The term “certification” was replaced with “the eligibility certification” because it is a defined term.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.4, S.L. 08-107.)

G.S. 105-129.75 – Sunset

This section was amended to effectively extend the sunset of the credit. Under prior law, the sunset was effective for expenditures incurred on or after January 1, 2011. As amended, the credit sunsets for rehabilitation projects for which an application for an eligibility certification is submitted on or after January 1, 2011.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.4.(d), S.L. 08-107.)

CORPORATION INCOME TAX

G.S. 105-130.5(a)(15)
– *Technical Change*

This subdivision was amended to limit the applicability of that subdivision to taxable years 2002 through 2005.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.1(c), S.L. 08-107.)

G.S. 105-130.5(a)(15a)
– *50% First Year Bonus Depreciation Add-Back*

This subdivision was added to require a taxpayer to add to federal taxable income a percentage of the 50% first-year bonus depreciation deduction allowed for federal income tax purposes under Section 168(k) of the Internal Revenue Code under the Economic Stimulus Act of 2008. The applicable percentage is 85% of the bonus depreciation for the tax year 2008. Any taxpayer who claimed the bonus depreciation for federal purposes for the tax year 2007 and whose North Carolina return also reflected that deduction must also add back 85% of the deduction claimed for the tax year 2007 on the 2008 tax return. This adjustment does not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.1(d), S.L. 08-107.)

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

This subdivision was added by the 2007 Legislature 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. The 2008 Legislature amended this subdivision to conform to the amendment to G.S. 105-129.16H that expanded the credit to include donations to State or local governments.

(New addition effective for taxable years beginning on or after January 1, 2008; SB 3, s. 13(b), S.L. 07-397; expansion of addition effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.25.(b), S.L. 08-107.)

G.S. 105-130.5(b)(11)
– *Clarifying Change*

This subdivision was amended to clarify that the deduction from federal taxable income for a business expense that was reduced or disallowed for federal income tax purposes because the Code allowed a federal tax credit in lieu of a deduction is allowed only to the extent that a similar State income tax credit is not allowed for the expense.

(Effective July 28, 2008; SB 1704, s.2.(b), S.L. 08-134.)

G.S. 105-130.5(b)(21a)
– Future Deduction for
50% First-Year
Accelerated
Depreciation Add-Back

This subdivision was added to provide a deduction from future income tax returns for the 50% additional first-year depreciation deduction required to be added to federal taxable income under G.S. 105-130.5(a)(15a). A taxpayer may deduct 20% of the total amount of accelerated depreciation added to federal taxable income in the tax year 2008 in each of the first five taxable years beginning on or after January 1, 2009.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.1.(g), S.L. 08-107.)

G.S. 105-130.5(b)(24)
– Subtraction for
Qualified Sale of
Manufactured Home
Community

This subdivision was added to provide a deduction from federal taxable income for 5% of the gross purchase price of a qualified sale of a manufactured home community. To qualify, the sale must be a one-time event to a group composed of a majority of the community's leaseholders or to a nonprofit organization that represents the group of leaseholders and notice of the sale must be given to the NC Housing Finance Agency pursuant to G.S. 42-14.3.

(Effective for taxable years beginning on or after January 1, 2008 and expires for taxable years beginning on or after January 1, 2015; HB 2436, s. 28.27.(a), S.L. 08-107.)

G.S. 105-130.16(a) –
Conforming Change

This section was amended to conform the corporate officers authorized to sign a corporate income tax return with those authorized by statute to sign a franchise tax return. Under prior law, the president, vice-president, treasurer, assistant treasurer, secretary, or assistant secretary was authorized to sign the return. As amended, the assistant treasurer, secretary, or assistant secretary are deleted and replaced by the chief financial officer.

(Effective for taxable years beginning on or after January 1, 2009; SB 1704, s. 4.(a), S.L. 08-134.)

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. 105-130.41(c1) –
State Ports Tax Credit
Reporting
Requirements

This subsection was amended to expand the information the Department is required to publish by May 1 of each year concerning the State Ports Tax Credit. Additional information includes the amount of charges attributable to imports and the amount of charges attributable to exports.

(Effective July 16, 2008; HB 2436, s. 28.5.(a), S.L. 08-107.)

**G.S. 105-130.41(d) –
State Ports Tax Credit
Sunset**

This subsection was amended to extend the sunset of the credit to taxable years beginning on or after January 1, 2014 from January 1, 2009.

(Effective July 16, 2008; HB 2436, s. 28.5.(b), S.L. 08-107.)

**G.S. 105-130.47(a) –
Film Industry Credit
Expansion**

This section was amended to expand the expenses of a production company that qualify for the credit. Under prior law, compensation paid to a highly compensated individual (defined as an individual who directly or indirectly receives compensation in excess of one million dollars) was not a qualifying expense. As amended, compensation up to one million dollars constitutes a qualifying expense. Amounts in excess of one million dollars are non-qualifying. Additionally, the cost of production-related insurance coverage constitutes a qualifying expense as long as the coverage is not purchased from a related member as defined for corporate income tax purposes.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.24.(a), S.L. 08-107.)

**G.S. 105-130.47(j) –
NC Film Office
Notification and
Acknowledgement**

Former subsection (j) was recodified as subsection (k). New subsection (j) was added to require a taxpayer to notify the Division of Tourism, Film, and Sports Development Division of the Department of Commerce of its intent to claim a credit and to provide the following information to claim a credit:

- The title of the production
- The name of the production company
- A financial contact for the production company
- The proposed dates on which the production company plans to begin filming
- Any other information required by the Division.

Productions receiving production credits must acknowledge in the production credits both the NC Film Office and the regional film office responsible for the geographic area in which the filming occurred.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.24.(a), S.L. 08-107.)

**G.S. 105-130.47(k) –
Film Industry Credit
Sunset**

Former subsection (j) was recodified as subsection (k) and amended to extend the sunset. The credit will expire for qualifying expenses occurring on or after January 1, 2014 instead of January 1, 2010.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.24.(a), S.L. 08-107.)

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 2008 calendar year. This charge is a percentage of gross premiums tax liability.

(Effective July 16, 2008; HB 2436, s. 28.13, S.L. 08-107.)

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. 105-228.5B (effective until June 30, 2010) – Conforming Change

This section was amended to conform to a change in the name of the North Carolina Health Insurance Risk Pool Special Fund as defined in G.S. 58-50-175. The term “special” was deleted from the name.

(Effective July 28, 2008; HB 2438, s.3.2.(d), S.L. 08-118.)

G.S. 105-228.5B (effective June 30, 2010) – Technical Change

The catch line is amended to read “Distribution of part of tax proceeds to High Risk Pool.”

(Effective July 28, 2008; HB 2438, s.3.2.(e), S.L. 08-118.)

SALES AND USE TAX

**G.S. 105-164.3(8g) –
Definition of Energy
Star Qualified Product**

This definition was added as a result of a new sales tax holiday authorized by the General Assembly. The term is defined as “a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.”

(Effective July 16, 2008 for sales made on or after that date; HB 2436, s. 28.12(a), S.L. 08-107.)

**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 as a result of the State’s assumption of Medicaid responsibilities for the counties.

(Effective October 1, 2008 for sales occurring on or after that date; HB 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; HB 1473, s. 31.16.4(g), S.L. 07-323.)

**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 1.4% 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 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. 105-164.4B(d)(2)
– Sourcing of Direct Mail

This subdivision was rewritten to correct a reference to the sourcing rule that applies when the purchaser of direct mail does not provide the seller a direct pay permit or other information to show the jurisdictions to which the direct mail is to be delivered. In such cases, direct mail is sourced to the address from which it was shipped.

(Effective August 7, 2008; SB 1632, s. 42, S.L. 08-187.)

G.S. 105-164.13 – Exemptions and Exclusions

The 2008 Session of the General Assembly added two new exemptions. Also included are exemptions enacted by the 2007 General Assembly with future effective dates. The changes and their effective dates are as follows:

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.)

Fuel and electricity sold to manufacturers – (57). 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.)

Disaster assistance debit card purchases – (58). This is a new exemption for tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality such as the Federal Emergency Management Administration (FEMA) or the American Red Cross. Prior to August 1, 2008, such purchases were subject to the applicable State and local sales and use tax.

(Effective August 1, 2008, HB 2436, s. 28.6(a), S.L. 08-107.)

Charges for interior design services in connection with sales – (59). This is a new exemption for interior design services provided in conjunction with the sale of tangible personal property. In order to qualify for the exemption, the charge representing the interior design services must be separately stated from the sales price of the tangible personal property.

(Effective August 1, 2008, HB 2436, s. 28.20(a), S.L. 08-107.)

**G.S. 105-164.13B(a) –
State Sales Tax
Exemption for Certain
Bakery Items**

This is a new exemption from the State sales and use tax for bakery items sold without eating utensils by an artisan bakery. These items are subject to the 2% local sales and use tax applicable to sales of qualifying food. Subdivision (4), which provides that “prepared food” is subject to the State and applicable local rates of tax, was amended to provide that prepared food other than bakery items sold without eating utensils by an artisan bakery is subject to the State and local rates of tax. For purposes of the exemption, the term “bakery item” includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. An “artisan bakery” is defined as “...a bakery that meets all of the following requirements: (a) It derives over eighty percent (80%) of its gross receipts from bakery items, and (b) Its annual gross receipts, combined with the gross receipts of all related persons as defined in G.S. 105-163.010, do not exceed one million eight hundred thousand dollars (\$1,800,000).”

(Effective January 1, 2009 for sales made on or after that date; HB 2436, s. 28.19(a), S.L. 08-107.)

**G.S. 105-164.13C(a) –
Change in 2008 Sales
Tax Holiday**

This subsection was rewritten to add new subdivision (2a) that exempts school instructional materials as defined in G.S. 105-164.3(37b) 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. 105-164.13D –
New Sales and Use
Tax Holiday for Energy
Star Qualified Products**

This new section authorizes a sales and use tax holiday for specific products that meet energy efficient guidelines and carry the Energy Star label. The term “Energy Star qualified product” is defined in G.S. 105-164.3(8g). Qualified products are exempt from all State and local sales and use taxes if sold between 12:01 a.m. on the first Friday of November and 11:59 p.m. the following Sunday. For 2008, the dates are Friday, November 7th through Sunday, November 9th. Only the following Energy Star qualified products

will be exempt from tax during the holiday period: clothes washers, freezers, refrigerators, central air conditioners, room air conditioners, air-source heat pumps, geothermal heat pumps, ceiling fans, dehumidifiers, and programmable thermostats. The exemption does not apply to rentals of qualified products and to sales of qualified products for use in a trade or business, including sales to contractors of products that will be installed in buildings or structures. Rentals of qualified products and sales of qualified products for use in a trade or business, such as sales to contractors, are subject to sales and use tax even when rented or sold during the holiday period.

(Effective July 16, 2008 for sales made on or after that date; HB 2436, s. 28.12(b), S.L. 08-107.)

*G.S. 105-164.14(a1) –
Refunds to Interstate
Passenger Air Carriers
Extended*

The provision allowing an interstate passenger air carrier a refund of the net amount of sales and use tax paid by it in North Carolina on fuel during a calendar year in excess of \$2,500,000, which was scheduled to be repealed for purchases made on or after January 1, 2009, was extended. As amended, the refund provision is repealed for purchases made on or after January 1, 2011.

(Effective July 16, 2008; HB 2436, s. 28.23(a), S.L. 08-107.)

*G.S. 105-164.14(b) –
Refunds to Certain
501(c)(3)
Organizations*

This subsection was rewritten to clarify the types of entities that qualify for semiannual refunds of sales and use taxes paid on direct purchases of tangible personal property and certain services for use in carrying on the work of the nonprofit entity. As rewritten, the refund provisions apply to an organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code and is not classified in any of the following major group areas of the National Taxonomy of Exempt Entities: Community Improvement and Capacity Building, Public and Societal Benefit, or Mutual and Membership Benefit. The provisions pertaining to hospitals not operated for profit and qualified retirement homes were not changed.

(Effective July 1, 2008 for purchases made on or after that date; HB 2436, s. 28.22(a), S.L. 08-107.)

*G.S. 105-164.14(b) –
Refunds to University
Affiliated Nonprofit
Organizations*

This subsection was further amended to add an additional category of organizations that qualifies for semiannual refunds of sales and use taxes. As amended, a university affiliated nonprofit organization (including an entity exempt from taxation as a disregarded entity of the nonprofit organization) that procures, designs, constructs, or provides facilities to, or for use by, a constituent institution of the University of North Carolina is eligible for refunds. Notwithstanding the statutory requirements pertaining to due dates, a request for a refund for the period January 1, 2004 through December 31, 2007 is timely filed if it is submitted to the Secretary of Revenue by October 15, 2008.

(Effective January 1, 2004 for purchases made on or after that date; HB 2509, s.1, S.L. 08-154.)

*G.S. 105-164.14(j) –
Refunds to Certain
Industrial Facilities*

This subsection was rewritten to expand the provision authorizing refunds of sales and use taxes paid by an eligible facility on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. New sub-subdivision (3)n. provides that a solar electricity generating materials manufacturing industry is now eligible for refunds. Solar electricity generating materials manufacturing means the development and production of one or more of the following: (1) Photovoltaic materials or modules used in producing electricity, and (2) Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity. New sub-subdivision (2)d. sets out the wage standard eligibility requirement that must be satisfied. The refund provision is repealed for sales made on or after January 1, 2013.

(Effective July 1, 2008 for purchases made on or after that date; HB 2438, s. 3.10(a), S.L. 08-118.)

*G.S. 105-164.14(l) –
Refunds to Motorsports
Racing Teams or
Motorsports
Sanctioning Bodies
Extended*

The provision allowing a professional motorsports racing team or a motorsports sanctioning body a refund of sales and use tax paid by it in this State on aviation fuel, which was scheduled to be repealed for purchases made on or after January 1, 2009, was extended. As amended, the refund provision is repealed for purchases made on or after January 1, 2011.

(Effective July 16, 2008; HB 2436, s. 28.23(b), S.L. 08-107.)

*G.S. 105-164.16(e) –
Simultaneous State
and Local Changes*

This new subsection was added to clarify how sales and use tax on lease or rental payments and installment sale payments is reported when the State and local rates change on the same date but the “combined general rate” does not change. When the State and local sales and use tax rates change on the same date because one increases and the other decreases, but the “combined general rate” as defined in G.S. 105-164.3(4a) does not change, taxes payable on the gross receipts from the following periodic payments are to be reported in accordance with the changed State and local rates: (1) Lease or rental payments billed after the effective date of the changes, and (2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis.

(Effective July 28, 2008; SB 1704, s. 11, S.L. 08-134.)

*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 objects 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. 105-164.44I(b) –
Revision to Video
Programming and
Telecommunications
Tax Distribution for
Supplemental PEG
Channel Support***

This subsection was rewritten to change the maximum amount of supplemental PEG channel support funds a county or city can receive.

(Effective August 2, 2008; SB 1716, s. 1, S.L. 08-148.)

***G.S. 105-164.44I(e) –
Revision to Use of
Proceeds from
Supplemental PEG
Channel Support***

This subsection was rewritten to clarify that the amount of proceeds for subsequent fiscal years is the same proportionate amount of funds as distributed in fiscal year 2006-2007, and that the funds are to be used for the same purpose as in 2006-2007.

(Effective August 2, 2008; SB 1716, s. 2, S.L. 08-148.)

***G.S. 105-164.44J –
Supplemental PEG
Channel Support***

This is new section pertaining solely to supplemental PEG (Public, Educational, or Governmental) channel support. Subsection (a) contains definitions of the following terms: “existing agreement,” “PEG channel,” “PEG channel operator,” “qualifying PEG channel,” and “supplemental PEG channel support funds.” Subsection (b) specifies the information that cities and counties must include in their annual certifications to the Secretary of Revenue. Cities or counties must certify to the Department by July 15th of each year the number of qualifying PEG channels provided for use by a cable service provider. The certification must include the following: (1) An identification of each channel as a public, an education, or a government channel, (2) The name and signature of the PEG channel operator. If a qualifying PEG channel has more than one PEG channel operator, the city or county must include the name of each operator of the PEG channel and a PEG channel operator may be included on the certification of only one county or city for each type of PEG channel that it operates, and (3) Any other information required by the Department. Subsection (c) provides additional restrictions as to how the supplemental PEG channel support funds are to be used. Subsection (d) requires a county or city to submit a revised certification if the county or city certifies a PEG channel in error and to return all supplemental PEG channel support funds distributed as a result of the error.

For the 2008 certification, the date the certification must be submitted is September 15, 2008 rather than July 15, as provided in Subsection (b).

(Effective August 2, 2008; SB 1716, s. 3, S.L. 08-148.)

*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.)

LOCAL SALES AND USE TAX

*G.S. 105-467(b) –
Exemption for Products
Sold During New Sales
Tax Holiday*

A technical amendment was made to add a reference to sales made during the new sales tax holiday for certain Energy Star qualified products set out in G.S. 105-164.13D. Sales of specific products made during the holiday are exempt from local sales and use taxes as well as State sales and use taxes.

(Effective July 16, 2008; HB 2436, s. 28.12(c), S.L. 08-107.)

*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.) **Repealed**
(Effective July 28, 2008; SB 1704, s. 14(b), S.L. 08-134.)

*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. 105-502 – Use of
Additional Tax
Revenue by Counties*

This section amends the method of determining the amount required to be reserved for the public school capital outlay fund in each county. As a result of the second one-half percent tax distribution method changing October 1, 2009, some counties will receive less funds under G.S. 105-501. The county must use sixty percent (60%) of the amount of revenue specified in the following:
(1) The amount of revenue the county receives under G.S. 105-

501(a), and (2) If the amount allocated to the county under G.S. 105-486 is greater than the amount allocated to the county under G.S. 105-501(a), the difference between the two amounts. This new method ensures the public school capital outlay fund is held harmless as a result of the Medicaid swap.

(Effective October 1, 2009 for distributions for months beginning on or after that date; SB 1704, s. 13(a), S.L. 08-134.)

**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. **Repealed (Effective July 28, 2008; SB 1704, s. 15(b), S.L. 08-134.)** 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. **Repealed (Effective July 28, 2008; SB 1704, s. 15(c), S.L. 08-134.)** 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. **Repealed (Effective July 28, 2008; SB 1704, s. 15(e), S.L. 08-134.)** 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.) **Repealed (Effective July 28, 2008; SB 1704, s. 15(f), S.L. 08-134.)***

*G.S. 105-522(a)(2) –
City Hold Harmless for
Repealed Local Taxes*

A technical amendment to subdivision (a)(2) was made to the hold harmless calculation to refer to G.S. 105-486 instead of Article 40 other than revenue from sales of qualifying food subject to only the 2% local tax. This amendment does not result in any change to the calculated amount. A technical amendment to subsection (b) makes it clear that the hold harmless payments are calculated on the basis of amounts allocated for distribution before any subtraction for the hold harmless payments, by referencing Article 39 and Chapter 1096 of the 1967 Session Laws.

(Effective October 1, 2008 for distributions for months beginning on or after that date; SB 1704, s. 14(a), S.L. 08-134.)

*G.S. 105-522(a)(2) –
City Hold Harmless for
Repealed Local Taxes
Amended*

This amends the city hold harmless calculation to match the formulas used in the tables that calculated the impact of the “Medicaid swap.” The calculation is the sum of (a) the amount allocated under G.S. 105-486 (Article 40), and (b) amount determined by subtracting twenty-five percent (25%) of G.S. 105-472 (Article 39) or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of G.S. 105-486 (Article 40).

(Effective October 1, 2009 for distributions for months beginning on or after that date; SB 1704, s. 15(g), S.L. 08-134.)

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. **Repealed (Effective July 28, 2008; SB 1704, s. 15(b), S.L. 08-134.)** 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. **Repealed (Effective July 28, 2008; SB 1704, s. 15(d), S.L. 08-134.)** 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. **Repealed (Effective July 28, 2008; SB 1704, s. 15(e), S.L. 08-134.)** 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.) **Repealed (Effective July 28, 2008; SB 1704, s. 15(f), S.L. 08-134.)***

G.S. 105-523(b)(c)(d) – County Hold Harmless for Repealed Local Taxes Amended

This amends subsections (b), (c), and (d) by inserting the city hold harmless amount into the calculation of the county hold harmless payment. A technical amendment to subdivision (b)(3) was made to the hold harmless calculation to refer to G.S. 105-486 instead of Article 40 other than revenue from sales of qualifying food subject to only the 2% local tax. This amendment does not result in any change to the calculated amount.

(Effective October 1, 2008 for distributions for months beginning on or after that date; SB 1704, s. 15(a), S.L. 08-134.)

*G.S. 105-523(b)(3) –
County Hold Harmless
for Repealed Local
Taxes*

This amends the county hold harmless calculation to match the formulas used in the tables that calculated the impact of the “Medicaid swap.” The calculation is the sum of subdivision (a.) the amount allocated under G.S. 105-486 (Article 40) and subdivision (b.) amount determined by subtracting twenty-five percent (25%) of G.S. 105-472 (Article 39) or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of G.S. 105-486 (Article 40).

(Effective October 1, 2009 for distributions for months beginning on or after that date; SB 1704, s. 15(h), S.L. 08-134.)

*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 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.)

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.) Repealed (Effective July 28, 2008; SB 1704, s. 14(c), S.L. 08-134.)

Chapter 1096 of the 1967 Session Laws, as Amended – Exemption for Products Sold During New Sales Tax Holiday

A technical amendment was made to add a reference to sales made during the new sales tax holiday for certain Energy Star qualified products set out in G.S. 105-164.13D. Sales of specific products made during the holiday are exempt from the 1% Mecklenburg County local sales and use tax as well as State sales and use taxes and other local sales and use taxes.

(Effective July 16, 2008; HB 2436, s. 28.12(d), S.L. 08-107.)

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.)

MANUFACTURING FUEL AND CERTAIN MACHINERY AND EQUIPMENT– ARTICLE 5F

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 five -tenths percent (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
Industrial Machinery
Refurbishing
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 an industrial machinery refurbishing company that is included in industry group 811310 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 repairing or refurbishing 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 by the industry or plant to manufacture tangible personal property.

(Effective July 1, 2008; HB 2436, s. 28.21(a), S.L. 08-107.)

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. 105-187.62 –
Administration of Tax
Amended**

This section was rewritten to make administrative changes. The owner or operator must record waste tonnage disposed of in a landfill or transferred to a station for disposal outside the State. This change clarifies that the tax is due only on the tonnage actually disposed of in North Carolina or transferred to a transfer station for disposal outside North Carolina; if recyclables or other items are removed prior to disposal or transfer of the tonnage, tax is not due on those items. The due date for a solid waste disposal tax return and payment was changed to provide that the return and payment are due on a quarterly basis, regardless of the amount of tax due. A return covers a calendar quarter; the return and payment are due by the last day of the month following the end of the quarter. The original provision required the return and payment to be filed in the same manner as sales and use tax returns. In addition, a bad debt deduction provision was added. This provision allows an owner or operator to recover tax paid on tonnage it received but for which it was never compensated.

(Effective August 9, 2008; HB 2530, s. 1, S.L. 08-207.)

**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, and (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.)*

**G.S. 105-187.63 – Use
of Tax Proceeds
Amended**

This section was rewritten to change the manner in which the tax proceeds are distributed. As amended, thirty-seven and one-half percent (37.5%) is to be distributed to cities and counties in the State on a per capita basis; one-half of this amount must be distributed to cities, and one-half to counties. The population of a county does not include the population of a city located in the county. A city or county is excluded from the distribution if it does not provide solid waste management programs and services and is not responsible by contract for payment for these programs and services, unless it is served by a regional solid waste management authority. Funds distributed must be used by a city or county solely for solid waste management programs and services; a city or county that receives such funds and is served by a regional solid waste management authority must forward the amount it receives to that authority. The portions distributed to the Inactive Hazardous Sites Cleanup Fund and the Solid Waste Management Trust Fund are unchanged.

(Effective August 9, 2008; HB 2530, s. 2, S.L. 08-207.)

LOCAL OCCUPANCY TAXES

**G.S. 153A-155(c) –
County Occupancy Tax
Due on Certain
Bundled Transactions**

This statute, which provides for the collection of the county room occupancy tax by operators of subject businesses, was rewritten to address the taxation of packages that include accommodation rentals. As rewritten, it specifies that when a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If the bundled transaction provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by its business records kept in the ordinary course of business; the tax is due on the allocated price of the taxable accommodation.

(Effective July 28, 2008; SB 1704, s. 12(b), S.L. 08-134.)

**G.S. 160A-215(c) –
City Occupancy Tax
Due on Certain
Bundled Transactions**

This statute, which provides for the collection of the city room occupancy tax by operators of subject businesses, was rewritten to address the taxation of packages that include accommodation rentals. As rewritten, it specifies that when a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If the bundled transaction provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by its business records kept in the ordinary course of

business; the tax is due on the allocated price of the taxable accommodation.

(Effective July 28, 2008; SB 1704, s. 12(c), S.L. 08-134.)

PROPERTY TAX

G.S. 105-273 – Definitions

Changes the definition of taxpayer to: a person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this subchapter, has a duty to list property for taxation. Makes other technical changes to the definitions throughout G.S. 105-273.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1876, s. 1.1, S.L. 2008-35.)

G.S. 105-275(29) — Nonprofit Historic Preservation Property

Property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement to be prepared and recorded, at the time of sale, under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.

(Effective for taxes imposed for taxable years beginning on or after July 28, 2008; SB 1704, s. 72, S.L. 2008-134.)

G.S. 105-275(31e) — Leasehold Interest in Exempt Real Property

Excludes from taxation a leasehold interest in real property that is exempt under G.S. 105-278.1 and is used to provide affordable housing for employees of the unit of government that owns the property. This exclusion requires a one-time application.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; HB 1889, s. 7, S.L. 2008-171.)

G.S. 105-275(42a) — Taxation of Heavy Equipment

Excludes from taxation heavy equipment on which a gross receipts tax may be imposed under G.S. 153A-156.1 and G.S. 160A-215.2.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2009; SB 1852, s. 1, S.L. 2008-144.)

**G.S. 105-275(44) —
Taxation of Drugs
Given as Free Samples**

Excludes from taxation free samples of drugs that are required by federal law to be dispensed only on prescription and are given to physicians and other medical practitioners to dispense free of charge in their course of practice.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1878, s. 4, S.L. 2008-146.)

**G.S. 105-275(45) —
Taxation of Solar
Electric Systems**

Designates solar energy electric systems used directly and exclusively for conversion of solar energy to electricity as a special class of property. Excludes 80% of the appraised value of the solar systems from taxation.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1878, s. 5, S.L. 2008-146.)

**G.S. 105-277.1B —
Property Tax
Homestead Circuit
Breaker**

Numerous technical changes were made to the circuit breaker to help with the administration of this new program starting in 2009. The residence has to be owned and occupied for at least five years. A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit even if only one of the owners meets the requirements. An annual application is required for this program. G.S. 105-282.1(a)(2)e is repealed. G.S. 153A-148.1(a) and G.S. 160A-208.1(a) is amended to allow the following information to be disclosed:

To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1876, s. 1.2-1.5, S.L. 2008-35.)

**G.S. 105-277.1C —
Provide a Property Tax
Exclusion for
Honorably Discharged
Disabled Veterans and
Their Surviving
Spouses**

Provides a property tax exclusion of the first \$45,000 of appraised value of the residence owned and occupied by a honorably discharged disabled veteran or the unmarried surviving spouse of a honorably discharged disabled veteran.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2009; HB 2436, s. 28.11, S.L. 2008-107.)

**G.S. 105-277.1D —
Uniform Provisions for
Payment of Deferred
Taxes**

Provides for uniform treatment of all the property tax deferral programs. The following statutes have this statement added concerning when deferred taxes are due:

The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1D when the property loses its eligibility for deferral as a result of a disqualifying event.

A disqualifying event is also defined in each of the following statutes:

- G.S. 105-275(29a), historic district property held as future site of historic structure.
- G.S. 105-277.1B, the property tax-homestead circuit breaker.
- G.S. 105-277.4(c), present-use value property.
- G.S. 105-277.14, working waterfront property.
- G.S. 105-277.15, wildlife conservation land.
- G.S. 105-278(b), historic property.
- G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1876, s. 2.1-2.7, S.L. 2008-35.)

**G.S. 105-277.1d(a) —
Deferred Tax Programs**

Adds wildlife conservation land to the list of deferred tax programs as enacted in Section 2.2 of S.L. 2008-35.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2010; HB 1889, s. 2, S.L. 2008-171.)

**G.S. 105-277.2 —
Present Use Value
Property Changes**

Changes the present use value law to allow additional forms of ownership to qualify for special tax treatment. Changes the types of business entities and trust, which can qualify for present use value. All members of the business entity must be directly or indirectly individuals who are actively engaged in farming agricultural land, horticultural land or forestland. Allows land to immediately qualify without requiring the deferred taxes to be assumed by the new owner as long as the new owner continues to use the land for the purpose for which it was classified under the previous ownership.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1878, s. 2, S.L. 2008-146.)

**G.S. 105-277.3 —
Wildlife Exception**

Provides that when an owner of land classified under this section does not transfer the land and the land becomes eligible for classification under G.S. 105-277.15, no deferred taxes are due. The deferred taxes remain a lien on the land and are payable in accordance with G.S. 105-277.15.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2010; HB 1889, s. 5, S.L. 2008-171.)

**G.S. 105-277.3(d1) —
Easements on
Qualified Conservation
Lands Previously
Appraised at Use
Value**

Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section; and the taxpayer received no more than seventy-five percent (75%) of the fair market value of the donated property interest in compensation.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2010; HB 1889, s. 4, S.L. 2008-171.)

**G.S. 105-277.15 —
Taxation of Wildlife
Conservation Land**

Provides a present use value system for wildlife conservation land. The land must be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission that is in effect as of January 1 of the year for which the benefit of this section is claimed and that requires the owner to do one or more of the following:

1. Protect an animal species that lives on the land and, as of January 1 of the year for which the benefit of this section is claimed, is on a North Carolina protected animal list published by the Commission under G.S. 113-333.
2. Conserve any of the following priority animal wildlife habitats: longleaf pine forest, early successional habitat, small wetland community, stream and riparian zone, rock outcrop, or bat cave.

It must have been classified under G.S. 105-277.3 when the wildlife habitat conservation agreement was signed or the owner must demonstrate to both the Wildlife Resources Commission and the assessor that the owner used the land for a purpose specified in the signed wildlife habitat conservation agreement for three years preceding January 1 of the year for which the benefit of this section is claimed. The land has to be at least 20 contiguous acres with no more than 100 acres of an owner's land in a county in the program.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2010; HB 1889, s. 1, S.L. 2008-171.)

**G.S. 105-277.16 —
Taxation of Low-
Income Housing
Property**

Designates low-income housing to which the North Carolina Housing Finance Agency allocated a federal tax credit under Section 42 of the Code as a special class of property. Requires the assessor to use the income approach as the method of valuation and requires the assessor to take rent restrictions that apply to the property into consideration. The assessor may not consider the income tax credits received under Section 42 of the Code in determining the income attributable to the property.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2009; SB 1878, s. 3, S.L. 2008-146.)

**G.S. 105-282.1 —
Application for
Exemption and
Exclusion**

Adds wildlife conservation land to the list of property, which only requires a one-time application for exclusion.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2010; HB 1889, s. 3, S.L. 2008-171.)

**G.S. 105-286 — Time
for General
Reappraisal of Real
Property**

Changes the schedule for general reappraisal of real property for those counties whose population is 75,000 or greater. If the county's sales assessment ratio determined under G.S. 105-289(h) is less than .85 or greater than 1.15, a reappraisal is required to be effective no later than January 1 of the third year following the year the ratio is reported to the county, or the eighth year following the year of the county's last reappraisal, whichever is earlier. Removes the Fourth Year Horizontal Adjustments provision from the statutes.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2009; SB 1878, s. 1, S.L. 2008-146.)

**G.S. 105-330 —
Combined Motor
Vehicle Registration
and Property Tax
System Changes**

Repeals G.S. 105-330.2. Provides that unregistered motor vehicles are subject to a discovery pursuant to G.S. 105-312 unless the vehicle has been taxed as a registered vehicle for the current year. Provides the accounting for the 60% interest of the first month's interest collected on unpaid property taxes on motor vehicles. Provides for a memorandum of understanding to be entered into by the Division of Motor Vehicles and the Property Tax Division of the Department of Revenue. Delays the effective date of implementation of the Combined Motor Vehicle Registration and Property Tax System until January 1, 2011.

(Effective for taxes imposed for taxable years beginning on or after July 28, 2008; SB 1704, s. 61-66, S.L. 2008-134.)

**G.S. 105-365.1 —
When and Against
Whom Collection
Remedies May Be
Used**

Provides the date of delinquency after which the tax collector may use delinquent tax collection remedies. For a non-deferral tax, the delinquency date is the date interest begins. For deferred taxes, the delinquency date is the date a disqualifying event occurs except for the death of the owner under the circuit breaker program. Under the circuit breaker program the delinquency date is the first day of the ninth month following the death of the owner.

Also provides who the taxpayer is for the purposes of enforced collection of property tax. For real property, it is the owner of record as of the date of delinquency. For personal property, it is the owner of record as of January 1 of the calendar year in which the taxes are due. For motor vehicles, it is the owner of record as of the date the registration is renewed or applied for.

(Effective for taxes imposed for taxable years beginning on or after July 1, 2008; SB 1876, s.2.8, S.L. 2008-35.)

*G.S. 153A-156.1 —
Heavy Equipment
Gross Receipts Tax in
Lieu of Property Tax*

Allows a county by resolution to impose a gross receipt tax at the rate of one and two-tenths percent (1.2%) on the gross receipts from the short-term lease or rental of heavy equipment.

(Effective on August 2, 2008; SB 1852, s. 2, S.L. 2008-144.)

*G.S. 160A-215.2 —
Heavy Equipment
Gross Receipts Tax in
Lieu of Property Tax*

Allows a city by resolution to impose a gross receipt tax at the rate of eight-tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment.

(Effective on August 2, 2008; SB 1852, s. 3, S.L. 2008-144.)

MOTOR FUELS TAX

G.S. 105-449.37(a) – Definitions

This statute was amended to add definitions for International Fuel Tax Agreement and qualified motor vehicle. This statute was also amended to modify the current definitions for motor carrier, motor vehicle, and operations. The definition additions and modifications were for clarification, with the exception of the motor vehicle definition, which was modified to include special mobile equipment within the definition.

(Effective January 1, 2009; SB 1704, s. 16, S.L. 08-134.)

G.S. 105-449.38 – Technical

This statute was amended to add a period at the end of the sentence.

(Effective January 1, 2009; SB 1704, s. 17, S.L. 08-134.)

G.S. 105-449.44 – Clarifying

This statute was amended to allow the Department to include information received from SHP when determining a potential liability of motor carriers. A technical change was also added to remove the dated term “identification marker” and replace it with a more commonly used and defined term of “decal.”

(Effective January 1, 2009; SB 1704, s. 18, S.L. 08-134.)

G.S. 105-449.47 – Technical

This statute was amended to remove the dated term “identification marker” and replace it with a more commonly used term of “decal.”

(Effective January 1, 2009; SB 1704, s. 19, S.L. 08-134.)

G.S. 105-449.47A – Technical

This statute was amended to remove the dated term “identification marker” and replace it with a more commonly used term of “decal.”

(Effective January 1, 2009; SB 1704, s. 20, S.L. 08-134.)

G.S. 105-449.50 – Repealed

This statute was repealed as the required information on application forms is identified in the General Administration statutes.

(Effective January 1, 2009; SB 1704, s. 21, S.L. 08-134.)

- G.S. 105-449.51 – Technical** This statute was amended to remove the dated term “identification marker” and replace it with a more commonly used term of “decal.”
(Effective January 1, 2009; SB 1704, s. 22, S.L. 08-134.)
- G.S. 105-449.52 – Technical** This statute was amended to remove the dated term “identification marker” and replace it with a more commonly used term of “decal.”
(Effective January 1, 2009; SB 1704, s. 23, S.L. 08-134.)
- G.S. 105-449.52(b) – Conforming** This statute was amended to conform the appeals language to that of the administrative review based on legislation passed during the previous legislative session.
(Effective July 25, 2008; SB 1704, s. 8, S.L. 08-134.)
- G.S. 105-449.60 – Definitions** This statute was amended to add definitions for clarity, move definitions that are currently located in other areas of the statutes, remove cross-references to other statutes wherever possible, reference a federal regulation, and to renumber the definitions.
(Effective January 1, 2009; SB 1704, s. 24, S.L. 08-134.)
- G.S. 105-449.65 – License Requirement** This statute was amended to limit the motor fuel transporter licensing requirement to those motor fuels transporters that transport motor fuel for compensation. This statute also removes the multiple activity reference for motor fuel transporters.
(Effective January 1, 2009; SB 1704, s. 25, S.L. 08-134.)
- G.S. 105-449.66 – Conforming** This statute was amended to move the definitions included in this statute to the definitions section for consistency. Also, a technical change was made to the term bulk end-user.
(Effective January 1, 2009; SB 1704, s. 26, S.L. 08-134.)
- G.S. 105-449.68 – Technical** This statute was amended to correct a grammatical error to the term bulk end-user.
(Effective January 1, 2009; SB 1704, s. 27, S.L. 08-134.)
- G.S. 105-449.69(c) – Technical** This statute was amended to remove permissive supplier from the list requiring a Federal Certificate of Registry. Permissive supplier is included in the definition of supplier; therefore, the inclusion is redundant.
(Effective January 1, 2009; SB 1704, s. 28, S.L. 08-134.)

**G.S. 105-449.70(a) –
Technical**

This statute was amended to correct a grammatical error.
(Effective January 1, 2009; SB 1704, s. 29, S.L. 08-134.)

**G.S. 105-449.74 –
Conforming**

This statute was amended to make a conforming change to have the same requirements for identifying the importer category as the current statutes have for identifying the supplier category.
(Effective January 1, 2009; SB 1704, s. 30, S.L. 08-134.)

**G.S. 105-449.75 –
Clarifying**

This statute was amended to clarify the payment responsibilities of all licensees rather than just the supplier upon cancellation of the license.
(Effective January 1, 2009; SB 1704, s. 31, S.L. 08-134.)

**G.S. 105-449.81 –
Taxation of Fuel Grade
Ethanol**

This statute was amended to impose the excise tax on fuel grade ethanol once it is removed from production storage, is removed from a terminal, or is imported into this State and not delivered to a licensed terminal.
(Effective January 1, 2009; SB 1704, s. 32, S.L. 08-134.)

**G.S. 105-449.82(c) –
Imposition of Tax on
Unlicensed Exporters**

This statute was amended to impose the excise tax on motor fuel sold to unlicensed exporters.
(Effective January 1, 2009; SB 1704, s. 33, S.L. 08-134.)

**G.S. 105-449.83A –
Clarifying**

This statute was amended to clarify that tax payments on fuel grade ethanol are payable by the fuel alcohol provider.
(Effective January 1, 2009; SB 1704, s. 34, S.L. 08-134.)

**G.S. 105-449.84A –
Imposition of Tax on
Unlicensed Suppliers**

This statute was amended to impose the excise tax on motor fuel transferred within the terminal transfer system to an unlicensed supplier. The tax liability is payable by the person transferring the fuel, the person receiving the fuel, and the terminal operator location at which the fuel was transferred.
(Effective January 1, 2009; SB 1704, s. 35, S.L. 08-134.)

**G.S. 105-449.85 –
Technical**

This statute was amended to correct a grammatical error.
(Effective January 1, 2009; SB 1704, s. 36, S.L. 08-134.)

**G.S. 105-449.86(b) –
Technical**

This statute was amended to correct a grammatical error to the terms bulk end-user and end-seller.
(Effective January 1, 2009; SB 1704, s. 37, S.L. 08-134.)

*G.S. 105-449.87(b) –
Technical*

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 38, S.L. 08-134.)

*G.S. 105-449.89 –
Restrictions and
Technical*

This statute was amended to restrict the transfer of fuel from a terminal to a marine vessel to licensed suppliers. This statute was further amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 39, S.L. 08-134.)

*G.S. 105-449.91 –
Conforming*

This statute was amended to identify the tax responsibility of purchasers of motor fuel to the supplier.

(Effective January 1, 2009; SB 1704, s. 40, S.L. 08-134.)

*G.S. 105-449.96 –
Technical*

This statute was amended to remove the majority of the return schedule sorting requirements that are obsolete due to electronic filing. The statute was further amended to modify the filing requirements for sales to exempt entities. The law was previously amended to no longer allow a distributor to use an exempt access card at the terminal. This change would remove that enabling language from this reporting statute.

(Effective January 1, 2009; SB 1704, s. 41, S.L. 08-134.)

*G.S. 105-449.97(c) –
Technical*

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 42, S.L. 08-134.)

*G.S. 105-449.100 –
Conforming*

This statute was amended to require licensed terminal operators to report transactions from out-of-state terminals with this State as its destination. This conforms to what is currently practiced. The statute was further amended to conform the structure of the statute to that of other like statutes.

(Effective January 1, 2009; SB 1704, s. 43, S.L. 08-134.)

*G.S. 105-449.101 –
Clarifying*

This statute was amended to clarify the person responsible for filing a motor fuels transporter return.

(Effective January 1, 2009; SB 1704, s. 44, S.L. 08-134.)

*G.S. 105-449.102 –
Conforming*

This statute was amended to conform the structure of the statute to that of other like statutes.

(Effective January 1, 2009; SB 1704, s. 45, S.L. 08-134.)

G.S. 105-449.105 – Denial of Refund

This statute was amended to change the heading to more accurately reflect the statute. The statute was further amended to disallow the refund on motor fuel exported by an unlicensed exporter.

(Effective January 1, 2009; SB 1704, s. 46, S.L. 08-134.)

G.S. 105-449.105A(a) – Clarifying

This statute was amended to clarify that the filing frequency of the kerosene refunds is monthly.

(Effective January 1, 2009; SB 1704, s. 47, S.L. 08-134.)

G.S. 105-449.105A(a)(1) – Technical

This statute was amended to correct a grammatical error to the term end-user.

(Effective January 1, 2009; SB 1704, s. 48, S.L. 08-134.)

G.S. 105-449.108(a) – Conforming

This statute was amended to conform the refund return due dates to the filing frequencies as established.

(Effective January 1, 2009; SB 1704, s. 49, S.L. 08-134.)

G.S. 105-449.115(b) – Clarifying

This statute was amended to clarify the information that is required on the shipping document.

(Effective January 1, 2009; SB 1704, s. 50, S.L. 08-134.)

G.S. 105-449.117(a) – Conforming

This statute was amended to conform to current practice and terminology.

(Effective January 1, 2009; SB 1704, s. 51, S.L. 08-134.)

G.S. 105-449.121(b) – Technical

This statute was amended to remove the term “distributor” from the list of those that the Department may audit. A distributor is included in the definition of a person, as defined by statute.

(Effective January 1, 2009; SB 1704, s. 52, S.L. 08-134.)

G.S. 105-449.130 – Definitions

This statute was amended to update cross-references and to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 53, S.L. 08-134.)

G.S. 105-449.131 – Technical

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 54, S.L. 08-134.)

*G.S. 105-449.133(a) –
Technical*

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 55, S.L. 08-134.)

*G.S. 105-449.137(a) –
Technical*

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 56, S.L. 08-134.)

*G.S. 105-449.138 –
Technical*

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 57, S.L. 08-134.)

*G.S. 105-449.139(c) –
Technical*

This statute was amended to correct a grammatical error to the term bulk end-user.

(Effective January 1, 2009; SB 1704, s. 58, S.L. 08-134.)

*G.S. 119-15 –
Definitions*

This statute was amended to add definitions for aviation gasoline and jet fuel and to update cross-references.

(Effective January 1, 2009; SB 1704, s. 59, S.L. 08-134.)

*G.S. 119-18(a) –
Clarifying*

This statute was amended to identify all fuel products subject to the inspection tax.

(Effective January 1, 2009; SB 1704, s. 60, S.L. 08-134.)

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, 2007 to May 1, 2008. Any amendments to the Internal Revenue Code enacted in 2007 that increase North Carolina taxable income for the 2007 taxable year become effective for taxable years beginning on or after January 1, 2008.

Note: This implies that North Carolina has conformed to all of the tax provisions of the federal Economic Stimulus Act of 2008. However, separate provisions in G.S. 105-130.5(a) and G.S. 105-134.6(c) result in the State not immediately conforming to the 50% first-year bonus depreciation allowance.

(Effective July 16, 2008; HB 2436, s. 28.1(a), S.L. 08-107.)

G.S. 105-241.11(a) – Clarifying Change

This section was amended to clarify the time for requesting a review after a proposed denial of a refund. The Department is deemed to have denied a request for refund if it takes no action within six months of the request for refund. Under prior law, a taxpayer had 45 days after the date the refund was deemed denied to request a review. Because the Department was concerned that taxpayers might not track the deemed denial date and inadvertently lose their opportunity to request a review, it recommended a modification of the statute to the General Assembly. As amended, a taxpayer may still request a review after a request for refund is deemed denied; however, the 45 day time period to request a review does not begin until the Department mails or delivers in person to the taxpayer a notice of denial.

(Effective for taxable years beginning on or after January 1, 2008 and applies to all requests for refunds pending on or filed on or after that date; SB 1704, s. 5(a), S.L. 08-134.)

G.S. 105-241.14(c) – Clarifying Change

This section was amended to clarify that failure to issue a notice of final determination within the required time does not affect the validity of either a proposed assessment or a proposed denial of a refund. As originally enacted, a proposed denial of a refund was omitted from the statute.

(Effective for taxable years beginning of or after January 1, 2008; SB 1704, s. 6.(a), S.L. 08-134.)

**G.S. 105-241.22(1) –
Clarifying Change**

This section was amended to clarify that the Department may collect tax, interest and penalty on a no-remit return even if the taxpayer does not show interest and penalty on the return. As originally written, the Department could collect a tax when a taxpayer filed a return showing tax due with the return but did not pay the amount shown due. As amended, “showing tax due” was replaced with “showing an amount due” to clarify that the Department is not limited to collecting only the tax amount shown due on the return.

(Effective for taxable years beginning on or after January 1, 2008; SB 1704, s. 7.(a), S.L. 08-134.)

**G.S. 105-242.2 –
Technical Change**

This section, originally codified as G.S. 105-253, was amended to make stylistic and clarifying changes and to include partners and managers of partnerships in the list of responsible persons who may be assessed for certain unpaid trust taxes owed by the business entity.

(Effective July 1, 2008 and applies to taxes that become collectible on or after that date; SB 1704, s. 10.(a), S.L. 08-134.)

**G.S. 105-249.2(b) –
Technical Change**

This section was amended to correct a statutory cross-reference to G.S. 105-236(a)(2),(3), and (4). It was erroneously referred to as G.S. 105-236(2),(3), and (4).

(Effective August 7, 2008; SB 1632, s.16, S.L. 08-187.)

**G.S. 105-251 –
Technical and
Clarifying Changes**

The catchline of this statute was amended to include the addition of a new subsection that clarifies that when a taxpayer provides additional information within the statute of limitations that establishes that an assessment or denial of a refund is incorrect, the correction must be made. The correction is not part of the process for the administrative or judicial review.

(Effective July 28, 2008; S.B. 1704, s. 71, S.L. 08-134.)

**G.S. 105-259 –
Disclosure**

A provision in the ratified bill authorizes an employee of the State to provide tax information about tax credits claimed under former Article 3A and current Article 3J to the University of North Carolina at Chapel Hill to enable the University to compile statistical information to fulfill a contractual obligation between the University and the General Assembly. In lieu of extracting the needed information from the tax returns, the State may provide a copy of the returns to the University for the University to extract the information. This disclosure is an exception to G.S. 105-259, but no amendments were made to that section.

(Effective July 28, 2008; SB 1704, s. 78, S.L. 08-134.)

*G.S. 105-259(b)(5d) —
Secrecy Required of
Officials; Penalty for
Violation*

This subdivision was amended to add heavy equipment rental tax to the list of information that may be disclosed to a county or city on an annual basis, when the county or city needs the information for the administration of the heavy equipment rental tax.

(Effective on August 2, 2008; SB 1852, s. 4, S.L. 2008-144.)

*G.S. 105-259(b)(38) –
Disclosure*

This subdivision was amended to permit the Department to verify with a unit of State or local government information concerning a tax credit claimed by a taxpayer for donations to the unit of State or local government for acquisition or lease of renewable energy property.

(Effective for taxable years beginning on or after January 1, 2008; HB 2436, s. 28.25.(d), S.L. 08-107.)

*G.S. 105-263 –
Extensions of Time for
Filing a Report or
Return*

This section was amended to remove the reference to gift tax returns as a result of the repeal of the gift tax.

(Effective January 1, 2009 and applies to gifts made on or after that date; HB 2436, s. 28.18.(a), S.L. 08-107.)

*G.S. 105-264.1 –
Secretary's
Interpretation*

This new section was added to clarify the authority for interpreting the application of local occupancy taxes to specific transactions since those taxes apply to accommodation rentals that are subject to sales and use tax. It provides that an interpretation by the Secretary of Revenue of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law in determining the application of the local law. A person who is subject to the local law or the unit of local government that administers the local law may ask the Secretary for an interpretation of the State law that determines the application of the local law. Such an interpretation provides the same protections against liability under the local law that it provides under the State law.

(Effective July 28, 2008; SB 1704, s. 12(a), S.L. 08-134.)

*G.S. 150B-31.1(d) –
Clarifying*

This statute was amended to allow the lab reports from the Department of Agriculture and other State and federal agencies to be admissible in a contested tax matter before the Office of Administrative Hearings (OAH) without testimony from the agency that completed the report. This is similar to that of law enforcement reports.

(Effective July 25, 2008; SB 1704, s. 9, S.L. 08-134.)

SMALL BUSINESS PROTECTION ACT

SECTION

7

SMALL BUSINESS PROTECTION ACT

Session Law 2008-107 (House Bill 2436) added several new statutes to Article 9 of Chapter 105 with regard to assessments against small businesses. Several statutes pertaining to advice given to taxpayers by the Department of Revenue were revised. The new and revised statutes, which are a result of findings by the General Assembly pertaining to compliance issues in complex areas of the sales and use tax laws, are explained below.

G.S. 105-237.1 – Compromise of Liability

This section of the law authorizing the Secretary of Revenue to compromise the amount of a taxpayer's liability was rewritten. The finding pertaining to a taxpayer's insolvency was rewritten to clarify that a taxpayer is considered insolvent only if it is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future or the taxpayer has been determined to be insolvent in a judicial proceeding. A new finding was added and provides that a taxpayer's liability may be compromised if collection of a greater amount than that offered in compromise would produce an unjust result under the circumstances. The provision specifically related to compromising an assessment based upon an action of the federal government in making an assessment which is subsequently settled, compromised, or adjusted was deleted. A new provision requires that, for a compromised tax liability of at least \$1,000.00, the Secretary must make a written statement setting out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign and keep a record of the statement. If the compromise settles a dispute that is in litigation, the Secretary must obtain the approval of the Attorney General before accepting the compromise, and the Attorney General must sign the statement describing the compromise; for other compromise settlements, approval of the Attorney General is not required.

(Effective July 16, 2008; HB 2436, s. 28.16(f), S.L. 08-107.)

*G.S. 105-244.2 –
Reduction of Certain
Sales Tax
Assessments Against
Small Businesses*

This is a new statute that requires the Secretary to reduce an assessment against a small business for State and local sales and use taxes and to waive any penalties imposed as part of the assessment when the assessment is made as the result of an audit of the small business and all of the following apply:

1. The gross receipts of the business for the calendar year preceding the year in which the audit period begins, combined with the gross receipts of all related persons as defined in G.S. 105-163.010, do not exceed one million eight hundred thousand dollars (\$1,800,000).
2. The business remitted to the Department all the sales and use taxes it collected during the audit period.
3. The business had not been told by the Department in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment, as reflected in the written audit comments of the prior audit.
4. The business made a good faith effort to comply with the sales and use tax laws and the assessment is based on the incorrect application of one of the following complex areas of these laws:
 - a. The rate of tax that applies to prepared food.
 - b. The distinction between a retailer and a performance contractor.
 - c. The distinction between a service that is necessary to complete the sale of tangible personal property, and is therefore taxable, and a service that is incidental to the sale of tangible personal property, and is therefore not taxable.
 - d. The determination of whether a person is a manufacturer.

The amount by which a sales and use tax assessment against a business must be reduced under the provisions of the Small Business Protection Act is a percentage of the assessment. The percentage is determined by the average monthly gross receipts of the business for the calendar year preceding the year in which the audit period begins, combined with the average monthly gross receipts of all related persons as defined in G.S. 105-163.010. Any reduction of an assessment and waiver of penalties imposed as part of an assessment apply only to the amount of an assessment attributable to the incorrect application of one of the four complex areas of the law listed above. The following table sets out the applicable percentage reductions of an assessment:

<u>Average Monthly Gross Receipts of Business Over</u>	<u>Average Monthly Gross Receipts Up To</u>	<u>Percentage Reduction</u>
\$ 0	\$50,000	98%
\$ 50,000	\$100,000	95%
\$100,000	\$150,000	90%

The provisions for reducing assessments against small businesses apply to the following:

1. A proposed assessment that is pending on July 15, 2008.
2. An assessment that becomes collectible under G.S. 105-241.22 on or after July 15, 2008.
3. An assessment that meets all of the following conditions:
 - a. It became collectible under G.S. 105-241.22 before July 15, 2008, or was identified in a notice of final assessment issued under former G.S. 105-241.1 before July 15, 2008.
 - b. It is not paid as of July 15, 2008.
 - c. If it had been paid within six months after it became collectible under G.S. 105-241.22 or was identified in a notice of final assessment issued under former G.S. 105-241.1, a timely claim for refund could be filed under G.S. 105-241.7 for a refund of the assessment.
4. A claim for refund filed in accordance with G.S. 105-241.7 for a refund of an assessment.

These provisions expire January 1, 2010. The expiration applies to an assessment that becomes collectible under G.S. 105-241.22 on or after the expiration date and to a claim for refund filed on or after the expiration date for a refund of an assessment paid before the expiration date.

(Effective July 16, 2008 and expires January 1, 2010; HB 2436, s. 28.16(b), S.L. 08-107.)

**G.S. 105-258.2 –
Taxpayer
Conversations (All
Taxes)**

This is a new section requiring the Secretary to document advice given to a taxpayer in a conversation between a taxpayer and an employee of the Department of Revenue that is conducted by telephone or in person and occurs at an office of the Department if the conversation is in person. It does not apply to a conversation occurring at a presentation, a conference, or another forum. The taxpayer must give the Secretary the taxpayer's identifying information, ask the Secretary about the application of a tax to the taxpayer in specific circumstances, and request that the Secretary document the advice in the taxpayer's records. The documentation may be an entry in the account record of the taxpayer or by another method determined by the Secretary; it must set out the date of the conversation, the question asked, and the advice given.

(Effective January 1, 2009; HB 2436, s. 28.16(c), S.L. 08-107.)

*G.S. 105-258.2 –
Taxpayer
Conversations (Sales
Tax)*

This new section was amended to add a new subsection for advice related to sales tax. It requires the Secretary to document advice given in a conversation with a person who is not registered as a retailer or a wholesale merchant when the person gives his name and address, describes a business in which he is engaged, asks if he is required to be registered, and requests that the advice be documented. The record of the person's inquiry must include the date of the conversation, the person making the inquiry, the business described in the conversation, and the advice given.

(Effective July 1, 2009; HB 2436, s. 28.16(d), S.L. 08-107.)

*G.S. 105-264 – Effect
of Secretary's
Interpretation*

This statute was rewritten to provide that a taxpayer is not liable for any penalty or additional assessment attributable to erroneous advice, either in writing or verbal, furnished by the Department when all of the following conditions are satisfied: (1) The advice was reasonably relied upon by the taxpayer, (2) The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information, and (3) The Department provided the advice in writing or the Department's records establish that it provided erroneous verbal advice.

(Effective July 16, 2008; HB 2436, s. 28.16(e), S.L. 08-107.)

*Session Law 2008-107
– Plan for Recording
Telephone Calls*

The Department of Revenue is directed to establish a plan for recording telephone calls received at the Taxpayer Assistance and Collection Center. The plan must be implemented by July 1, 2010 and must provide for recording calls for the purpose of training and evaluation with respect to customer service and quality control measures. The Department may retain up to \$700,000 of the amount collected under Article 5 of Chapter 105 in fiscal year 2008-2009 for this purpose. Any portion of that amount not used in 2008-2009 will remain available for this purpose until the system is implemented.

(Effective July 16, 2008; HB 2436, s. 28.16(g), S.L. 08-107.)

*Session Law 2008-107
– Study of Issues by
Revenue Laws Study
Committee*

The Revenue Laws Study Committee is required to study the following issues, report on that study, and make recommendations or legislative proposals: (1) The taxation of services necessary to complete the sale of tangible personal property and standards for distinguishing between a service that is taxable as one that is necessary to complete the sale and a service that is incidental to the sale of tangible personal property, (2) The applicability of the sales and use tax to performance contracts and standards for distinguishing between performance contractors and retailers, and (3) The distinction between food and prepared food under the sales and use tax laws and whether to eliminate this distinction by applying a uniform, revenue-neutral rate to all food.

(Effective July 16, 2008; HB 2436, s. 28.16(h), S.L. 08-107.)

*Session Law 2008-107
– Department of
Revenue to Report on
Customer Service
Improvement Initiatives*

The Department of Revenue is required to make a report to the Revenue Laws Study Committee prior to the convening of the 2009 General Assembly on customer service improvement initiatives it conducts. The Department must address, at a minimum, reviews of the following issues: (1) Efforts to ensure that inquiries on complicated tax matters are handled or reviewed by appropriate Department personnel, (2) Efforts to provide accurate and timely information regarding changes in tax law resulting from legislative changes, court decisions, or revised interpretations, (3) Outreach efforts designed to assist taxpayers, particularly small business taxpayers, in complying with the State's tax laws, (4) Efforts to ensure that taxpayers are informed of their right to request written advice from the Department upon which they may reasonably rely, and (5) Plans to record telephone calls at the Taxpayer Assistance and Collection Center.

(Effective July 16, 2008; HB 2436, s. 28.16(i), S.L. 08-107.)