



**NORTH CAROLINA
DEPARTMENT OF REVENUE**

2011 TAX LAW CHANGES



**OFFICE OF THE ASSISTANT SECRETARY
FOR TAX ADMINISTRATION**

PO Box 871

Raleigh, NC 27602-0871

PREFACE

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

- changes made by prior General Assemblies that take effect for tax year 2011, as well as,
- changes made by the 2011 General Assembly, regardless of when they take effect.

The local sales and use tax changes follow the State sales and use tax changes. The document does not include law changes that affect the Department of Revenue but do not affect the tax laws.

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

Thomas L. Dixon, Jr.
Assistant Secretary of Revenue
Tax Administration

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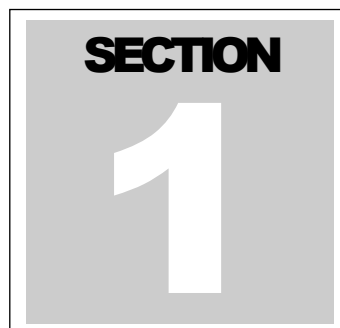
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PERSONAL TAXES



ESTATE TAX

Article 1A, G.S. 105-32.1–G.S. 105-32.8 – Estate Tax Imposed: The North Carolina estate tax is reinstated effective for those decedents dying on or after January 1, 2011, if a federal estate tax return is required. P.L. 111-312, which became law December 17, 2010, reinstates the federal estate tax retroactively to January 1, 2010. The federal law provides an exclusion of \$5,000,000 (the portability provision provides an exclusion amount of \$10,000,000 for married couples) and a maximum estate tax rate of 35%. The federal law also provides that the estate of a decedent dying in 2010 may elect not to pay federal estate tax, and receive a modified carryover basis in the property passing through the estate.

North Carolina law conforms to the exclusion amounts and gives estates that chose to pay federal estate tax and receive the stepped-up basis in the property passing through the estate to receive the stepped-up basis for North Carolina purposes although there is no North Carolina estate tax return filed for those who died during 2010. For decedents dying on or after January 1, 2013, the estate tax provisions return to the 2001 rates and exclusion amounts.

(Effective for the estates of decedents dying on or after January 1, 2011; SB 267, s. 11, S.L. 11-330.)

INDIVIDUAL INCOME TAX

G.S. 105-134.1 – Definitions of Adjusted Gross Income and Taxable Income: This subsection was rewritten to add the definition of adjusted gross income as defined in section 62 of the Code and to remove the definition for taxable income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(a), S.L. 11-145.)

G.S. 105-134.2A – Income Tax Surtax Expired: North Carolina no longer has an income tax surtax.

(Effective for taxable years beginning on or after January 1, 2011; SB 202, s. 27A.1(c), S.L. 09-451)

G.S. 105-134.4 – Definition of Taxable Year: Repealed.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(d), S.L. 11-145.)

G.S. 105-134.5 – North Carolina Taxable Income Defined: The term “North Carolina taxable income” means adjusted gross income as modified in G.S. 105-134.6.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(b), S.L. 11-145.)

G.S. 105-134.5(e) – Tax Year Defined: This new subsection was added to replace the former definition of taxable year as defined under G.S. 105-134.4, which has been repealed.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(b), S.L. 11-145.)

G.S. 105-134.6 – Modifications to Adjusted Gross Income: This section was rewritten to reflect the change to make adjusted gross income the starting point for the computation of North Carolina taxable income. In addition, section title “Adjustments to taxable income” was changed to “Modifications to adjusted gross income.”

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(a1) – Personal Exemption: House Bill 200 created this new subsection and defines allowable personal exemption amounts based on filing status and adjusted gross income. Senate Bill 267 rewrote this subsection to clarify that the taxpayer is allowed the same personal exemptions allowed under section 151 of the Code for the taxable year.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12.(b), S.L. 11-330.)

G.S. 105-134.6(a2) – Deduction Amount: House Bill 200 created this new subsection that defines the standard deduction available to taxpayers based on filing status. Senate Bill 267 rewrote this subsection to clarify that in the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer’s spouse claims itemized deductions for State purposes. SB 267 also allows an additional State deduction amount for taxpayers who are entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12.(b), S.L. 11-330.)

G.S. 105-134.6(b) – Other Deductions: This section was rewritten. Subsection title “Deductions” was changed to “Other Deductions”. Deductions are allowed in this subsection to the extent those items are included in the taxpayer’s adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(b)(17b) – Future Deduction for Bonus Depreciation Add-Back: This subdivision was added to provide a future deduction from federal taxable income for the 85% additional first-year depreciation deduction required to be added to federal taxable income under G.S. 105-134.6(c)(8b). A taxpayer may deduct 20% of the total amount of bonus depreciation added to federal taxable income in taxable year 2010 in each of the first five taxable years beginning on or after January 1, 2011. For taxpayers who made the addition for bonus depreciation on their 2011 returns, the deduction applies to the first five taxable years beginning on or after January 1, 2012. For taxpayers who made the addition for bonus depreciation on their 2012 returns, the deduction applies to the first five taxable years beginning on or after January 1, 2013.

(Effective March 17, 2011; HB 124, s. 2.(d), S.L. 11-5.)

G.S. 105-134.6(b)(21) – Future Deduction for Code Section 179 Add-Back: This subdivision was added to provide a future deduction from federal taxable income for the Code section 179 expense required to be added to federal taxable income for property placed in service during taxable years 2010 or 2011. A taxpayer may deduct 20% of the total amount of Code section 179 expense added to federal taxable income in taxable year 2010 in each of the first five taxable years beginning on or after January 1, 2011. For taxpayers who made the addition for Code section 179 on their 2011 returns, the deduction applies to the first five taxable years beginning on or after January 1, 2012.

(Effective March 17, 2011; HB 124, s. 3.(d), S.L. 11-5.)

G.S. 105-134.6(b)(22) – Business Income Deduction: House Bill 200 created this new subdivision to allow a deduction of \$50,000 for net business income the taxpayer receives during the taxable year. The term “business income” does not include income that is considered passive income under the Code.

Senate Bill 267 rewrote this subdivision to clarify that an amount not to exceed \$50,000 of net business income the taxpayer receives during the taxable year may be deducted. However, in the case of a married couple filing a joint return where both spouses receive or incur net business income, the maximum amount applies separately to each spouse’s net business income, not to exceed a total of \$100,000.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12.(c), S.L. 11-330.)

G.S. 105-134.6(c) – Additions: This section was rewritten to reflect the change to make adjusted gross income the starting point for the computation of North Carolina taxable income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(3) – Addition for Taxes Claimed: This subsection was rewritten to require an addition for qualified motor vehicle taxes claimed as an itemized deduction.

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12(d), S.L. 11-330.)

G.S. 105-134.6(c)(4) – Additional Standard Deduction: Repealed. The change to adjusted gross income makes this statute irrelevant.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(4a) – Personal Exemption Adjustment: Repealed. The change to adjusted gross income makes this statute irrelevant.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(8b) - Bonus Depreciation Add-Back: This subdivision was added to require a taxpayer, for taxable years 2010 through 2012, to add to federal taxable income 85% of the first-year bonus depreciation deduction allowed for federal income tax purposes under §168(k) or §168(n) of the Code.

A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a bonus depreciation deduction allowed for the property under section 168(k) of the Code must add 85% of the amount of the bonus depreciation deduction to taxable year 2010.

The adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective March 17, 2011; HB 124, s. 2.(c), S.L. 11-5.)

G.S. 105-134.6(c)(11) – Real Property Tax Add-Back by Nonitemizers: Repealed. This federal deduction was in addition to the basic federal standard deduction and was available for tax years 2008 and 2009.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(12) – Motor Vehicle Sales Tax Add-Back: Repealed. House Bill 200 removed the reference to Code section 63(c)(1)(E). Senate Bill 267 repealed this subdivision and added a reference to qualified motor vehicle tax under G.S. 105-134.6(c)(3).

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12(e), S.L. 11-330.)

G.S. 105-134.6(c)(15) – Code Section 179 Expense Add-Back: This subdivision was added to require a taxpayer, for taxable years 2010 through 2012, to add to federal taxable income 85% of the amount by which the taxpayer's expense deduction under section 179 of the Code for property placed in service in taxable year 2010 or 2011 exceeds the amount that would have been allowed for the respective taxable year under section 179 of the Code as of May 1, 2010.

The adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective March 17, 2011; HB 124, s. 3.(c), S.L. 11-5.)

G.S. 105-134.6(d) – Other Adjustments: This subsection was rewritten to make reference to adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(d)(4) – Deduction for Contribution to North Carolina 529 Plan: Adjusted gross income limitations which were to take effect for tax years beginning on or after January 1, 2012, are repealed.

(Effective June 3, 2011; SB 247, s.1, S.L. 11-106.)

G.S. 105-134.6(d)(8) – Deduction for Net Operating Loss Add-Back: This subdivision was rewritten to reference the statute that required the net operating loss add-back by adding new subparagraphs a. and b. G.S. 105-134.6(d)(8)a. and b. allow the taxpayer a deduction on taxable years 2011 through 2013 who made an addition as required pursuant to G.S. 105-134.6(d)(7).

Pursuant to G.S. 105-134.6(d)(8)a. the taxpayer may deduct one-third of the net operating loss absorbed on the taxpayer's 2003, 2004, and 2005 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code, with the exception of the portion of the net operating loss of an eligible small business absorbed on the taxpayer's 2003, 2004, and 2005 federal returns.

Pursuant to G.S. 105-134.6(d)(8)b., the taxpayer may deduct one-third of the net operating loss absorbed on the taxpayer's 2004, 2005, and 2006 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code, with the exception of the portion of the net operating loss of an eligible small business absorbed on the taxpayer's 2004, 2005, and 2006 federal returns.

(Effective for taxable years beginning on or after January 1, 2011; SB 267, s. 13, S.L. 11-330.)

TAX CREDITS

G.S. 105-129.4(b) – Tax Incentives for Businesses Wage Standard: This subsection was amended to replace the “Employment Security Commission” with the “Division of Employment Security.”

(Effective beginning on November 1, 2011; SB 532, s. 3.8, S.L. 11-401)

G.S. 105-129.12A(c) – Encourage Investment to Retain Article 3A Installment: This subsection was rewritten to provide an alternate requirement for a taxpayer to remain eligible to claim an installment of the credit for substantial investment in other property even though the taxpayer failed to meet the 200 jobs provision. The new alternative requires the taxpayer to maintain at least 125 employees at the property and within two years of the date the employment fell below 200, to invest at the property the greater of \$5,000,000 or at least twice the value of the remaining installments of the credit.

(Effective for taxable years beginning on or after January 1, 2009; HB 751, s.11, S.L. 11-302.)

G.S. 105-129.81 – Article 3J Definitions: This section is amended by adding new subdivision (20a) to define port enhancement zone as defined in G.S. 143B-437.012.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 6, S.L. 11-302.)

G.S. 105-129.83 - Eligibility; Forfeiture: Subsections (c) Wage Standard and (l) Planned Expansion are rewritten to add port enhancement zone in the same category as urban progress zone and agrarian growth zone.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 7, S.L. 11-302.)

G.S. 105-129.84 – Credit Treated as Tax Payment: Subsection (e) was added to allow the owner of a pass-through entity that claims a credit under this Article 3J to treat some or all of the credit claimed as a tax payment made by or on behalf of the taxpayer. A credit claimed that is treated as a tax payment is subject to all provisions of this section. A credit claimed that is treated as a tax payment does not accrue interest under G.S. 105-241.21 if the payment is determined to be an overpayment. A taxpayer that elects to have a credit claimed under Article 3J treated as a tax payment must make the election when the return is filed.

(Effective for taxable years beginning on or after January 1, 2011; SB 385, s.4, S.L. 11-297.)

G.S. 105-129.87 – Credit for Creating Jobs: This section was rewritten to include a port enhancement zone in the same category as an urban progress zone and agrarian growth zone in subsections (a), (b), (c), and (e).

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.88 – Credit for Investing in Business Property: This section was rewritten to include a port enhancement zone in the same category as an urban progress zone and agrarian growth zone in subsections (a), (c), and (e).

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 9, S.L. 11-302.)

G.S. 105-151.26 – Credit for Charitable Contributions by Nonitemizers: This section has been rewritten to allow a taxpayer, who elects the North Carolina standard deduction, a tax credit against North Carolina individual income tax for an amount equal to 7% of the taxpayer's excess charitable contributions. Excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code exceed 2% of the taxpayer's adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(e), S.L. 11-145.)

G.S. 105-151.33 – Children with Disabilities Special Education Tax Credit: This section was added to provide a tax credit of up to \$3,000 per semester for the tuition paid for an eligible dependent child. The credit is equal to the amount the taxpayer paid for tuition and special education and related expenses, limited to \$3,000 per semester.

An eligible dependent child must be a resident of North Carolina and enrolled in grades kindergarten through 12 in a nonpublic school or a public school where tuition is required in accordance with G.S. 115C-366.1. The child must meet the following criteria: (1) Is a child with a disability as defined by G.S. 115C-106.3(1); (2) Was

determined to require an individualized education program as defined by G.S. 115C-106.3(8); (3) Receives special education or related services on a daily basis; and (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

To meet the initial eligibility requirement, for the preceding two semesters the child must have been enrolled at a public school or received a special education or related services through a public school as a preschool child with a disability as defined by G.S. 115C-106.3(17).

For purposes of this section, the spring semester is the first six months of the taxable year, and the fall semester is the second six months of the taxable year. An eligible dependent is enrolled in a school for a semester if the eligible dependent child is enrolled in that school for more than 70 days during that semester.

This credit may not be claimed if, for any semester during which the eligible dependent child would otherwise qualify, that dependent met any of the following conditions: (1) Was placed in a nonpublic school or facility by a public agency at public expense; (2) Spent any time enrolled as a full-time student taking at least 12 hours of academic credit in a postsecondary educational institution; (3) Was 22 years or older during the entire semester; or (4) Graduated from high school prior to the end of the semester.

The amount of the credit is reduced for any semester in which the eligible dependent child spent any time enrolled in a public school. The amount of the reduction is a percentage equal to the percentage of the semester that the eligible dependent child spent enrolled in a public school.

Any unused portion of the tax credit may be carried forward for three years.

(Effective for taxable years beginning on or after January 1, 2011 and applies to semesters for which the credit is claimed beginning on or after July 1, 2011; HB 344 s. 1, S.L. 11-395.)

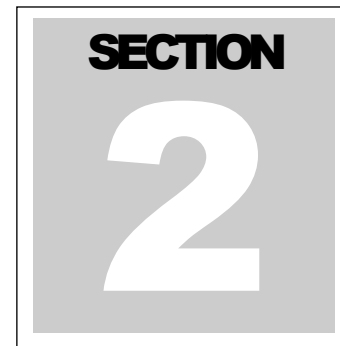
This section is amended for taxable years beginning on or after January 1, 2016. For the initial eligibility, the eligible dependent child must be enrolled at a public school or receive special education services through a public school for the preceding semester, rather than the preceding two semesters.

(Effective for taxable years beginning on or after January 1, 2016 and applies to semesters for which the credit is claimed beginning on or after July 1, 2016.; HB 344, s.2, S.L. 11-395.)

G.S. 143B-437.012 - Port Enhancement Zone Designation: Chapter 143B of the General Statutes is amended by adding a new section. This new section includes subsections (a) and (b) which define a port enhancement zone and the corresponding limitations and designation.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s.5, S.L. 11-302.)

CORPORATE TAX



FRANCHISE TAX

G.S. 105-120.2(f) – Technical Correction: This subsection was repealed because it is not needed. The provision allows a holding company a credit against its franchise tax in the amount of its credit for Qualified Business Investments under Part 5 of Article 4. However, Session Law 1996-14, section 7, repealed the provision which allowed corporations a credit for Qualified Business Investments effective for investments made on or after January 1, 1997.

(Effective June 27, 2011; SB 267, s. 3, S.L. 11-330.)

G.S. 105-122(b)(2) – Franchise Tax Base Modification: This subdivision was amended to specifically exempt amortization of intangible assets as permitted for income tax purposes from surplus and undivided profits. Before this change, the Department issued franchise tax assessments against taxpayers who failed to include accumulated amortization as reflected on the balance sheet in arriving at the capital stock base. With this change, taxpayers are still required to include the book reserve for accumulated amortization in the calculation of the base; however, taxpayers may now deduct the accumulated amortization as permitted for income tax purposes from the franchise tax base. Because the change is retroactive to tax years beginning on or after January 1, 2007, taxpayers who overpaid franchise tax as a result of the inclusion of amortization of intangible assets in the franchise tax base may request a refund, subject to the statute of limitations.

(Effective for taxable years beginning on or after January 1, 2007; HB 200, s. 31A.2(a), S.L. 11-145. Note: Franchise tax levied under G.S.105-122 is for the income year of the corporation in which it becomes due.)

G.S.105-122(c1)(3)– 15 Year Alternative Apportionment Repealed: This subsection, enacted during the 2010 session of the General Assembly in an attempt to entice a specific company to make a substantial investment in North Carolina, was repealed. The provision required that the company commit to the investment by September 15, 2010. The company did not sign a letter of commitment, but instead made the investment in another state.

(Effective June 27, 2011; SB 267, s. 5, S.L. 11-330.)

G.S.105-125(b) – Clarifying Change: This subsection was amended to clarify that the deduction permitted to certain investment companies, such as a Real Estate Investment Trust, for the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments, applies only to the computation of the capital stock, surplus and undivided profits base.

(Effective June 27, 2011; SB 267, s. 8, S.L. 11-330.)

G.S.105-127(f) – Clarifying Change: This subsection was amended to clarify the facts under which a domestic corporation that is dissolved is relieved of franchise tax liability. Part 1 of Article 14 of Chapter 55 controls in the case of voluntary dissolution of a corporation by its incorporators, directors or shareholders. In that case, the corporation is not subject to franchise tax after the end of the income year in which the dissolution occurs unless the Secretary finds that the corporation has engaged in business activities in the State not appropriate to winding up and liquidating its business and affairs. Part 2 of Article 14, Chapter 55 deals with administrative dissolutions initiated by the Secretary of State when a taxpayer fails to comply with statutory requirements, such as filing an annual report. A corporation is not relieved of its franchise obligation during the period in which it has been administratively dissolved.

(Effective June 27, 2011; SB 267, s. 9, S.L. 11-330.)

TAX INCENTIVES FOR NEW AND EXPANDING BUSINESS

G.S. 105-129.4(b) – Conforming Change: Legislation was enacted to reform employment security laws by creating the Division of Employment Security within the Department of Commerce and transferring the functions of the Employment Security Commission to the new division. This subsection was amended such that the reference to the Employment Security Commission conforms to the re-structure.

(Effective November 1, 2011; SB 532, s. 3.8, S.L. 11-401.)

G.S. 105-129.12A(c) – Article 3A Credit Expiration Modified: This subsection was amended to modify the conditions under which the William S. Lee credit for Substantial Investment in Other Property will expire. As originally written, to be eligible for the credit, a taxpayer was required to invest at least \$10 million in real estate in a three year period and to create at least 200 new jobs at that location within two years of the property being placed in service as an eligible business. Installments of the credit expire if the employment level drops below 200. As amended, a taxpayer whose employment level drops below 200 may continue to take installments of the credit if it maintains an employment level of at least 125 and, within two years of the date employment dropped below 200, it invests at that property the greater of \$5 million or at least twice the value of the remaining credit.

(Effective for taxable years beginning on or after January 1, 2009; HB 751, s. 11, S.L. 11-302.)

BUSINESS AND ENERGY TAX CREDITS

G.S.105-129.16I – Credit for a Renewable Energy Property Facility: This new section reinstates and expands the credit for constructing a facility to manufacture renewable energy property in this State which was codified under G.S. 105-130.28 and expired in 2006. The credit is 25% of the cost to construct or convert and equip a facility to manufacture renewable energy property or a major component subassembly for a solar array or a wind turbine. The credit is taken in five equal installments beginning in the year the property is placed in service. If the property is disposed of or taken out of service during any year in which an installment of the credit accrues, the credit expires and the taxpayer may not take any remaining installments. It may, however, take any carry forward amount of a previous installment, subject to the five year carry forward limitation.

(Effective for taxable years beginning on or after January 1, 2011 and expires for facilities placed in service on or after January 1, 2014; HB 1829, s. 3, S.L. 10-167.)

TECHNOLOGY DEVELOPMENT

G.S.105-129.50(1) – Technical Change: This subsection was amended to add a definition of “tier one”. The term was not defined for purposes of Article 3F.

(Effective June 27, 2011; SB 267, s. 4, S.L. 11-330.)

G.S.105-129.50(4a) – Definition of Participating Community College: This subsection was added to define a participating community college as one that offers an associate in applied science degree in simulation and game development.

(Effective for taxable years beginning on or after January 1, 2011; HB 1973, s. 3.2, S.L. 10-147.)

G.S. 105-129.51 – Taxpayer Standards: This section was amended to expand the requirements for eligibility for the credits in Article 3F. In addition to satisfying the requirements related to the wage standard, health insurance, environmental impact, and safety and health programs, the taxpayer must also have no overdue tax debts.

(Effective for taxable years beginning on or after January 1, 2011; HB 1973, s. 3.3, S.L. 10-147.)

G.S. 105-129.54 – Report: This section was amended by two pieces of legislation. As originally written, the section required the Department to publish a report specific to the

Research and Development credit, itemizing the report by taxpayer. The first amendment deletes the requirement for a separate report and instead sets out the details that are to be included in a new economic incentives report required under G.S. 105-256.

The second amendment expands the reporting requirement. With the addition of the interactive digital media credit to Article 3F, the amended statute requires the Department to itemize the report by type of credit as well as by taxpayer. Additionally, with respect to the Research and Development credit, the report must be itemized by categories of small business, low-tier, university research, other and a new zone designation, Eco-Industrial Park. The interactive digital media credit must be itemized by the categories of higher education collaboration and other.

(The amendment to cross reference G.S. 105-256 is effective July 1, 2010; SB 1215, s. 1.7, S.L. 10-166. The second amendment is effective for taxable years beginning on or after January 1, 2011; HB 1973, s. 3.5, S.L. 10-147.)

G.S. 105-129.55 – R&D in an Eco-Industrial Park: This section was amended to create a new category of expense eligible for the research and development credit. A taxpayer that has qualified North Carolina research expenses is allowed a credit equal to a percentage of the expenses. The percentage is dependent upon the category under which the expense falls. The new category is an Eco-Industrial Park certified under G.S. 143B-437.08. The percentage of expenses with respect to research performed in an Eco-Industrial Park is 35%.

(Effective for taxable years beginning on or after January 1, 2011; HB 1973, s. 5.5, S.L. 10-147.)

G.S. 105-129.56 – Interactive Digital Media Credit: This new section creates a credit for an industry that develops in this State interactive digital media (“IDM”) or a digital platform or engine for use in interactive digital media. IDM is a product that is produced for distribution on electronic media, including distribution over the Internet, contains a computer-controlled virtual universe with which an individual interacts in order to achieve a goal, and contains a significant amount of at least three of the following types of data: animated images, fixed images, sound, text, and 3D geometry.

The credit is equal to a percentage of the taxpayer’s expenses that exceed \$50,000. Qualifying expenses are compensation and wages for a full-time job on which withholding payments are remitted, employee fringe contributions on compensation and wages, including health, pension, and welfare contributions, and amounts paid to a participating community college or a research university for services performed in this State. The credit is equal to 20% of the allowable expenses paid to a participating community college or a research university. The credit for other allowable expenses is limited to 15%. The credit may not exceed \$7.5 million.

The following types of interactive digital media do not qualify for the credit:

- developed by the taxpayer for internal use,

- interpersonal communications service, such as videoconferencing, wireless telecommunication, a text-based channel, or a chat room,
- an internet site that is primarily static and primarily designed to provide information about a person or business,
- gambling or casino game,
- political advertising,
- is obscene as defined in G.S. 14-190.1 or is harmful to minors as defined in G.S. 14-190.13.

A taxpayer claiming the IDM credit may not claim any other credit under Chapter 105 or a JDIG or One North Carolina Fund grant with respect to the expenses used to determine the IDM credit. Like the Research and Development credit, the taxpayer must make a binding election to claim the IDM credit against the income taxes levied in Article 4 or franchise tax levied in Article 3 and the credit is limited to 50% of the tax. Unused portions of the credit may be carried forward for 15 years.

(Effective for taxable years beginning on or after January 1, 2011, HB 1973, s. 3.6, S.L. 10-147.)

TAX CREDITS FOR GROWING BUSINESSES

G.S. 105-129.81(13) – Technical Change- Information Technology and Services defined: This subsection was amended to make conforming changes and to add a new subdivision necessitated by the legislature’s action to update the reference to NAICS from the 2002 edition to the 2007 edition. New subdivision (d) adds industry group 519130 to the definition.

(Effective June 27, 2011; SB 267, s. 31(b), S.L. 11-330.)

G.S. 105-129.81(18) – Technical Change – NAICS defined: This subsection was amended to reference G.S. 105-228.90, a new statute in Article 9 that defines NAICS as adopted by the United States Office of Management and Budget as of December 31, 2007.

(Effective June 27, 2011; SB 267, s. 31(b), S.L. 11-330.)

G.S. 105-129.81(20a) – Port Enhancement Zone defined: This subdivision was added to define port enhancement zone by reference to G.S. 143B-437.012. A port enhancement zone is an area that meets all of the following conditions: (1) it is comprised of one or more contiguous census tracts, census block groups, or both, (2) all of the area is located within 25 miles of a State port and is capable of being used to enhance port operations, and (3) every census tract and census block group in the area has at least 11% of households with incomes of \$15,000 or less.

(Effective January 1, 2013; HB 751, s. 6, S.L. 11-302.)

G.S. 105-129.83(c) – Eligibility, Wage Standard: This subsection was amended to add a port enhancement zone to the list of areas that will be treated as a tier one area for purposes of the wage standard. A taxpayer is not required to meet a wage standard in a tier one area.

(Effective January 1, 2013; HB 751, s. 7, S.L. 11-302.)

G.S. 105-129.83(l) – Eligibility, Planned Expansion: A taxpayer that signs a letter of commitment with the Department of Commerce calculates its credit based on the tier or zone designation in place at the time the letter is signed. This subsection was amended to add a port enhancement zone to the list of zones.

(Effective January 1, 2013; HB 751, s. 7, S.L. 11-302.)

G.S. 105-129.84(e) – Credit Treated as Tax Payment: This subsection was added to permit the owner of a pass-through entity to treat part or all of a tax credit claimed under Article 3J as a tax payment made by or on behalf of the taxpayer. All provisions of the section, such as tax election, cap and statute of limitations apply. A credit claimed as a tax payment does not accrue interest.

(Effective for taxable years beginning on or after January 1, 2011; SB 385, s. 4, S.L. 11-297.)

G.S. 105-129.87(a) – Credit for Creating Jobs, Credit: This subsection was amended to add the port enhancement zone to the list of areas in which the value of a credit for a job created in that area will be increased by \$1,000 and if the job is filled by a resident of that area or by a long-term unemployed worker, the amount of the credit is increase by \$2,000.

(Effective January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.87(b) – Credit for Creating Jobs, Threshold: This subsection was amended to add the port enhancement zone to the list of areas that will be treated as a tier one area for purposes of the jobs threshold.

(Effective January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.87(c) – Credit for Creating Jobs, Calculation: A job is considered to be located in a county or zone if more than 50% of the employee's duties are performed within the county or zone. This subsection was amended to add the port enhancement zone to the list of areas.

(Effective January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.87(e) – Credit for Creating Jobs, Transferred Jobs: When a job is transferred from a county or zone to a higher tier, remaining installments of the credit

are computed as if the job was created in the higher tier. Likewise, if a job is transferred from a higher tier to a lower tier or zone, the remaining installments of the credit are computed as if the job was created in the lower tier or zone. This subsection was amended to add the port enhancement zone to the list of areas.

(Effective January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.88(a) – Credit for Investing in Business Property, General Credit:

This subsection was amended to add a port enhancement zone to the list of areas that will be treated as a tier one area for purposes of determining the applicable percentage to use in the computation of the business property credit.

(Effective January 1, 2013; HB 751, s. 9, S.L. 11-302.)

G.S. 105-129.88(c) – Credit for Investing in Business Property, Threshold: This subsection was amended to add a port enhancement zone to the list of areas that will be treated as a tier one area for purposes of determining the minimum investment required for credit eligibility. Tier one areas require no minimum investment.

(Effective January 1, 2013; HB 751, s. 9, S.L. 11-302.)

G.S. 105-129.88(e) – Credit for Investing in Business Property, Transferred

Property: When property is transferred from a county or zone to a higher tier, remaining installments of the credit are allowed only to the extent they would have been allowed if the property was initially placed in the area to which it was moved. Likewise, if property is transferred from a higher tier to a lower tier or zone, the remaining installments of the credit are computed as if the property was originally placed in the lower tier or zone. This subsection was amended to add the port enhancement zone to the list of areas.

(Effective January 1, 2013; HB 751, s. 9, S.L. 11-302.)

CORPORATION INCOME TAX

G.S. 105-130.4(t2) – 15 Year Alternative Apportionment Repealed: This subsection, enacted during the 2010 session of the General Assembly in an attempt to entice a specific company to make a substantial investment in North Carolina, was repealed. The provision required that the company commit to the investment by September 15, 2010. The company did not sign a letter of commitment, but instead made the investment in another state.

(Effective June 27, 2011; SB 267, s. 5, S.L. 11-330.)

G.S. 105-130.5(a)(15b) – Bonus Depreciation: This subdivision was added to require a taxpayer, for taxable years 2010 through 2012, to add to federal taxable income 85% of the first-year bonus depreciation deduction allowed for federal income tax purposes under §168(k) or §168(n) of the Code.

A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a bonus depreciation deduction allowed for the property under section 168(k) of the Code must add 85% of the amount of the bonus depreciation deduction to taxable year 2010.

The adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective March 17, 2011; HB 124, s. 2(a), S.L. 11-5.)

G.S. 105-130.5(a)(23) – Section 179 Expense: This subdivision was added to require a taxpayer to add to federal taxable income 85% of the amount by which the expense deduction under §179 of the Code for property placed in service during 2010 and 2011 exceeds the amount that would have been allowed as of May 1, 2010. However, for purpose of this subdivision, the definition of §179 property has the same meaning as under § 179 of the Code as of January 1, 2011.

The adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective March 17, 2011; HB 124, s. 3(a), S.L. 11-5.)

G.S. 105-130.5(b)(21b) – Deduction for Bonus Depreciation Add-Back: This subdivision was added to provide a future deduction from federal taxable income for the 85% additional first-year depreciation deduction required to be added to federal taxable income under G.S. 105-130.5(a)(15b). A taxpayer may deduct 20% of the total amount of bonus depreciation added to federal taxable income in taxable year 2010 in each of the first five taxable years beginning on or after January 1, 2011. For taxpayers who made the addition for bonus depreciation on their 2011 returns, the deduction applies to the first five taxable years beginning on or after January 1, 2012. For taxpayers who made the addition for bonus depreciation on their 2012 returns, the deduction applies to the first five taxable years beginning on or after January 1, 2013.

(Effective March 17, 2011; HB 124, s. 2(b), S.L. 11-5.)

G.S. 105-130.5(b)(26) – Deduction for Code Section 179 Add-Back: This subdivision was added to provide a future deduction from federal taxable income for the Code section 179 expense required to be added to federal taxable income for property placed in service during taxable years 2010 or 2011. A taxpayer may deduct 20% of the total amount of Code section 179 expense added to federal taxable income in taxable year 2010 in each of the first five taxable years beginning on or after January 1, 2011. For taxpayers who made the addition for Code section 179 on their 2011 returns, the deduction applies to the first five taxable years beginning on or after January 1, 2012.

(Effective March 17, 2011; HB 124, s. 3(b), S.L. 11-5.)

G.S. 105-130.5A – Rules for Combined Return: This section was added to establish new procedures for the Secretary to follow when he has reason to believe that a corporation conducts its business in such a manner as to fail to accurately report its State net income. The Secretary may make written request of the taxpayer to provide any information reasonably necessary to determine whether the corporation's intercompany transactions have economic substance and are at fair market value. The corporation must provide the information within 90 days of the request.

If the Secretary finds as a fact that the intercompany transactions lack economic substance or are not at fair market value, the Secretary must first adjust the intercompany transactions to redetermine the taxpayer's income attributable to this State. If adjustment to intercompany transactions is inadequate to correct taxable income, the Secretary may give written notice to the taxpayer requiring a combined report of all members of the affiliated group that are conducting a unitary business. The taxpayer must submit the return within 90 days. The Secretary or the taxpayer may propose a combination of fewer than all members of the unitary group; however, there must be mutual consent.

If the Secretary makes an adjustment or requires a combined return, he must provide a written statement to the taxpayer containing detailed facts, circumstances, and reasons for which he has found that the corporation did not accurately report its income attributable to this State. The statement must also give the proposed method for computing income. The statement must be given to the taxpayer no later than 90 days following the issuance of a proposed assessment.

A transaction has economic substance if the transaction, or series of transactions, has one or more reasonable business purposes other than for the creation of State income tax benefits and has economic effects beyond the creation of State income tax benefits. In determining whether transactions between affiliates are not at fair market value, the Secretary must apply the standards contained in the regulations adopted under section 482 of the Code.

A corporation or noncorporate entity is part of the affiliated group if more than 50% of the voting stock or ownership interest is directly or indirectly owned or controlled by a common owner or by one or more of the member corporations or noncorporate entities. The following entities will not be included in a combined return:

1. A corporation not required to file a federal income tax return.
2. An insurance company, other than a captive insurance company.
3. A corporation exempt from taxation under section 501 of the Code.
4. An S corporation.
5. A foreign corporation as defined in section 7701 of the Code, other than a domestic branch.
6. A partnership, limited liability company, or other entity not taxed as a corporation.
7. A corporation with at least 80% of its gross income from all sources in the tax year being active foreign business income as defined in section 861(c)(1)(B) of the Code in effect as of July 1, 2009.

(Effective January 1, 2012; HB 619, s. 2, S.L. 11-390.)

G.S. 105-130.6 – Subsidiary and Affiliated Corporations: This section was repealed.

(Effective January 1, 2012 and applies to assessments issued on or after that date; HB 619, s. 1, S.L. 11-390.)

G.S. 105-130.15(a) – Conforming Change: This subsection was amended to delete language regarding the Secretary's opinion as to whether a methodology used by the taxpayer to compute its income is proper. Rules for determining income attributable to activities conducted in this State are codified in G.S. 105-130.5A.

(Effective January 1, 2012 and applies to assessments issued on or after that date; HB 619, s. 3, S.L. 11-390.)

G.S. 105-130.16 - Returns: Subsections (b) and (c) were repealed. These are some of the statutes primarily relied on by the Secretary to combine corporations when true earnings were not reported to this State. Rules for determining income attributable to activities conducted in this State are codified in G.S. 105-130.5A.

(Effective January 1, 2012 and applies to assessments issued on or after that date; HB 619, s. 4, S.L. 11-390.)

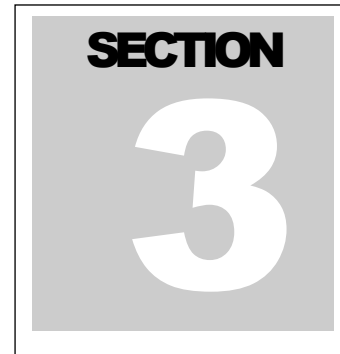
INSURANCE GROSS PREMIUMS TAX

G.S. 58-6-25 – Insurance Regulatory Charge: The percentage rate to be used in calculating the insurance regulatory charge under this statute is 6% for the 2011 calendar year. This charge is a percentage of gross premiums tax liability.

(Effective June 15, 2011; HB 200, s. 31.27.(a), S.L. 11-145.)

G.S. 105-228.8(e) – Retaliatory Premium Taxes: This law change is a technical change that removes references to fire and lightning coverage from this subsection. The 2006 Legislature repealed the additional State and local fire and lightning taxes and replaced them with an additional tax on property coverage contracts. Prior to the 2006 legislative change, this subsection, which exempts special purpose obligations or assessments based on premiums from retaliatory tax, specifically included 75% of the additional State fire and lightning tax in the retaliatory tax base. The additional tax on property coverage contracts is considered a special purpose obligation and is not subject to retaliatory tax.

EXCISE TAX



PRIVILEGE TAXES

G.S. 105-37.1(a)(1) – Gross Receipts Tax on Live Entertainment: The 2010 General Assembly enacted SB 897 in which G.S. 105-37.1(a)(1) was rewritten to replace the references to specific types of entertainment subject to the 3% gross receipts tax set out in subdivisions (1), (2) and (3) with the general term, “live entertainment of any kind.” The value of amenities is excluded from the amount subject to tax. The effective date was for admission charges received on or after August 1, 2010. During the 2011 session, the General Assembly amended the effective date, making it retroactive for admission charges received before, on or after February 1, 2009. A taxpayer that included amenities in the computation of the gross receipts tax before, on or after February 1, 2009 may apply for a refund.

(Effective for charges for admission received before, on or after February 1, 2009; SB 267, s.31.7.(e), S. L. 11-330.)

TOBACCO PRODUCTS TAX

G.S. 105-113.4(1) – Definition of an Affiliate: This subsection was changed from a definition of a “cigar” to a definition of an “affiliate”. G.S. 105-113.4(1) that was previous a definition of a “cigar” is moved to subsection (1b). The definition of an “affiliate” is a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(Effective June 27, 2011; SB 267, s. 2.(a), S.L. 11-330.)

G.S. 105-113.4(1a) – Definition of an Affiliated Manufacturer: This subsection was changed from a definition of a “cigarette” to a definition of an “affiliated manufacturer”. G.S. 105-113.4(1a) that was previous a definition of a “cigarette” is moved to subsection (1c). The definition of an “affiliated manufacturer” is a manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

(Effective June 27, 2011; SB 267, s. 2.(a), S.L. 11-330.)

G.S. 105-113.4(4a) – Definition of an Integrated Wholesale Dealer: This subsection was amended to remove the definition of an “affiliate”. The definition of an “affiliate” was moved to G.S. 105-113.4(1).

(Effective June 27, 2011; SB 267, s. 2.(a), S.L. 11-330.)

G.S. 105-113.10 – Manufacturers Exempt from Paying the Tax: This statute was changed to add subsection (a) and subsection (b). In addition, the title of the statute was renamed to “Manufacturers exempt from paying tax.”

(Effective June 27, 2011; SB 267, s. 2.(b), S.L. 11-330.)

G.S. 105-113.10(a) – Shipping to Other Distributors: This subdivision was added but did not change the previous language in G.S. 105-113.10.

(Effective June 27, 2011; SB 267, s. 2.(b), S.L. 11-330.)

G.S. 105-113.10(b) – Shipping for Affiliated Manufacturer: This subdivision was added to allow a manufacturer to be relieved of paying the excise taxes on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from the manufacturer’s facilities.

(Effective June 27, 2011; SB 267, s. 2.(b), S.L. 11-330.)

G.S. 105-113.21(b) – Refund: This subdivision was amended to allow a distributor to return cigarettes to either a manufacturer or to an affiliated manufacturer who is contracted by the manufacturer for the purposes of validating quantities and disposing of unsalable cigarettes.

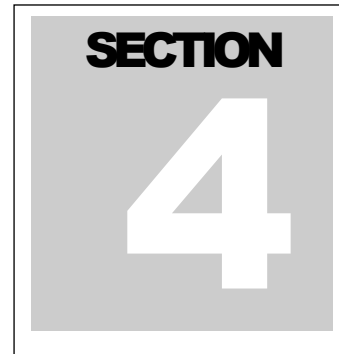
(Effective June 27, 2011; SB 267, s. 2.(c), S.L. 11-330.)

MOTOR FUELS

G.S. 105-236(a)(2) was amended to clarify that the penalty for failure to obtain a motor fuels license will be imposed after previous notification by the Department that a license was required and the license is not obtained.

(Effective June 27, 2011; SB 267, s. 32, S.L. 2011-330.)

SALES AND USE TAX



SALES AND USE TAX

G.S. 105-164.3 – Definitions: The 2011 General Assembly added and revised multiple definitions. The changes and their effective dates are as follows:

NAICS – (23a). This definition is amended to reference G.S. 105-228.90.

(Effective June 27, 2011; SB 267, s.31.(c), S.L. 11-330.)

Over-the-counter drug – (25a). This definition is amended to correct a federal reference.

(Effective June 27, 2011, applies to sales made on or after that date; SB 267, s. 15.(a), S.L. 11-330.)

Prepaid telephone calling service – (27). This definition is amended to delete the word “wireline” in order to conform to the Streamlined Sales and Use Tax Agreement.

(Effective June 27, 2011, applies to sales made on or after that date; SB 267, s. 15.(a), S.L. 11-330.)

Prepaid calling service – (27b). This definition is amended to delete the word “wireline” in order to conform to the Streamlined Sales and Use Tax Agreement.

(Effective June 27, 2011, applies to sales made on or after that date; SB 267, s. 15.(a), S.L. 11-330.)

Professional motorsports racing team – (30a). This definition is amended to clarify the conditions a racing team must satisfy to be considered a professional motorsports racing team.

(Effective June 27, 2011, applies to sales made on or after that date; SB 267, s. 15.(a), S.L. 11-330.)

Related member – (33b). This definition is added to conform to the legislative intent for refunds available to a qualifying motorsports team or sanctioning body per G.S 105-164.14A(4) and a qualifying professional motorsports team per G.S 105-164.14A(5).

(Effective June 27, 2011, applies retroactively to purchases made on or after January 1, 2005; SB 267, s.15.(b), S.L. 11-330.)

G.S. 105-164.4(a) – Decrease in State Sales Tax Rate: Effective July 1, 2011, the State general rate of tax decreases from 5.75% to 4.75%.

(Effective July 1, 2011 for sales occurring on or after that date; SB 202, s.27A.2.(b), S.L. 09-451.)

G.S. 105-164.4(a)(3) – Accommodations: This subdivision is amended to modernize sales tax on accommodations “A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to a private residence or cottage that is rented for fewer than 15 days in a calendar year or to an accommodation rented to the same person for a period of 90 or more continuous days. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental. A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and, within three business days of receiving the notice, the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator. A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2. The following definitions apply in this subdivision: a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual. b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.”

(Effective January 1, 2011 and applies to gross receipts derived from the rental of an accommodation on or after that date; SB 897, s. 31.6.(a), S.L. 10-31. Makes a technical change to replace “act” with the word “section”; SB 1202, s. 10.2., S.L. 10-123.)

G.S. 105-164.4(a)(3) – Accommodations: A facilitator is not liable for an overcollection or undercollection of sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with the law and collect the proper amount of tax as the result of the change under Section 31.6 of S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under G.S. 105-164.4(a)(3), 153A-155(c), and 160A-215(c).

(Effective June 27, 2011 and applies only to the period beginning January 1, 2011, and ending April 1, 2011; SB 267, s. 23, S.L. 11-330.)

G.S. 105-164.4(a)(3) – Accommodations: This subsection is amended to clarify that an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity is not subject to tax.

(Effective June 27, 2011; SB 267, s. 16, S.L. 11-330.)

G.S. 105-164.4B(e) – Sourcing Principles – Accommodations: This is a new subsection to source the rental of an accommodation, as defined in G.S. 105-164.4(a)(3) to the location of the accommodation.

(Effective January 1, 2011 and applies to gross receipts derived from the rental of an accommodation on or after that date; SB 897, s. 31.6.(b), S.L. 10-31.)

G.S. 105-164.4B(f) – Sourcing Principles – Digital Property: This is a new subsection to source digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first. This legislation conforms to the Streamlined Sales and Use Tax Agreement.

(Effective June 27, 2011; SB 267, s. 29, S.L. 11-330.)

G.S. 105-164.4C(h)(5) – Definition – Postpaid Calling Service: This definition is amended to delete the word “wireline” in order to conform to the Streamlined Sales and Use Tax Agreement.

(Effective June 27, 2011; SB 267, s. 17, S.L. 11-330.)

G.S. 105-164.6(c) – Complementary Use Tax - Credit: This subsection is amended to clarify that sales and use tax must be “due” and paid on the item to another state in order to receive credit against North Carolina tax due.

(Effective June 27, 2011; SB 267, s. 25(a), S.L. 11-330.)

G.S. 105-164.11(a) – Remittance of Overcollections to Secretary: This subsection is amended to address when a seller overcollects sales tax on a transaction and directs the Secretary what action is to be taken as follows: (1) If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The Secretary may allow the refund only if the seller gives the purchaser credit for or a refund of the overcollected tax. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under option (2). (2) If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under option (1). The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax. (3) If neither (1) nor (2) applies, the Secretary shall retain the total amount collected on the transaction.

(Effective July 1, 2011, applies to tax liabilities that accrue on or after that date; HB 93, s.1., S.L. 11-293.)

G.S. 105-164.13 – Exemptions and Exclusions: The 2011 General Assembly enacted clarifying changes to exemptions. The changes and their effective dates are as follows:

Sales of prosthetic devices – (12)a. This exemption is amended to add “for human use.” This is to clarify the intent of the exemption and clarifies the exemption does not apply to animals.

(Effective June 27, 2011; SB 267, s. 18, S.L. 11-330.)

Food sold not for profit by a public school cafeteria... – (26a). This exemption is amended to correct “Department of Public Instruction” to “Department of Health and Human Services.”

(Effective June 27, 2011; SB 267, s. 18, S.L. 11-330.)

Tangible personal property sold by a retailer... – (33a). This exemption is amended to clarify the retailer must deliver the tangible personal property to a common carrier or to the United States Postal Service.

(Effective June 27, 2011; SB 267, s. 18, S.L. 11-330.)

Food and other items lawfully purchased under the Food Stamp Program... – (38).

This exemption is amended to correct “Special Supplemental Food Program” to “Special Supplemental Nutrition Program.”

(Effective June 27, 2011; SB 267, s. 18, S.L. 11-330.)

Installation charges when charges are separately stated... – (49). This exemption is amended by clarifying installation charges must be separately “stated on the invoice at the time of the sale.” This clarification is consistent with the Sales and Use Tax Technical Bulletin and Administrative Code provision pertaining to installation charges.

(Effective June 27, 2011; SB 267, s. 18, S.L. 11-330.)

G.S. 105-164.13D(a) – Sales and Use Tax Holiday for Energy Star Qualified

Products: This section is amended by deleting geothermal heat pumps from the list of items eligible for exemption from sales and use tax during the holiday. The removal of such items has no effect.

(Effective June 27, 2011; SB 267, s. 19, S.L. 11-330.)

G.S. 105-164.14(d2) – Certain City Purchases Not Eligible for Refund: This is a new subsection that prohibits a refund of sales and use tax paid for purchases by a city subject to the provisions of G.S. 160A-340.5 related to the provision of communications service as defined in Article 16A of Chapter 160A of the General Statutes.

(Effective May 21, 2011, applies to sales made on or after that date; HB 129, s.1.(b), S.L. 11-84.)

G.S. 105-164.14(p) – Certain Refunds Authorized - Not an Overpayment: This is a new subsection to clarify that taxes refunded under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

(Effective June 27, 2011; SB 267, s. 26(a), S.L. 11-330.)

G.S. 105-164.14A(a)(1) – Refunds for Passenger Air Carrier: This subsection is amended to extend the repeal date for purchases made on or after January 1, 2011 to January 1, 2013.

(Effective June 27, 2011 and applies retroactively to purchases made on or after January 1, 2011; SB 267, s. 20.(a), S.L. 11-330.)

G.S. 105-164.14A(a)(4) – Refunds for Motorsports Team or Sanctioning Body:

This subsection is amended to add “a related member of such a team or body” in order to fulfill legislative intent to allow a related member a refund.

(Effective June 27, 2011 and applies retroactively to purchases made on or after January 1, 2005; SB 267, s.15.(c), S.L. 11-330.)

G.S. 105-164.14A(a)(4) – Refunds for Motorsports Team or Sanctioning Body:

This subsection is amended to extend the repeal date for purchases made on or after January 1, 2011 to January 1, 2013.

(Effective June 27, 2011 and applies retroactively to purchases made on or after January 1, 2011; SB 267, s. 20.(a), S.L. 11-330.)

G.S. 105-164.14A(a)(5) – Refunds for Professional Motorsports Team: This subsection is amended to add “a related member of such a team” in order to fulfill the legislative intent to allow a related member a refund.

(Effective June 27, 2011 and applies retroactively to purchases made on or after July 1, 2007; SB 267, s.15.(c), S.L. 11-330.)

G.S. 105-164.14A(d) – Economic Incentive Refunds - Not an Overpayment: This is a new subsection to clarify that taxes refunded under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

(Effective June 27, 2011; SB 267, s. 26(b), S.L. 11-330.)

G.S. 105-164.14B(a) – Definitions for Certain Industrial Facilities Refunds: This section is amended to make changes to definitions.

Owner –(12). This definition is added as “the term includes a lessee under a capital lease.”

(Effective July 1, 2010, applies to sales made on or after that date; SB 76, s.1.(a), S.L. 11-3.)

Paper-from-pulp manufacturing –(13). This definition is added as “an industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.”

(Effective July 1, 2010, applies to sales made on or after that date; SB 76, s.1.(a), S.L. 11-3.)

Strategic partner –(20). This definition is repealed.

(Effective July 1, 2010, applies to sales made on or after that date; SB 76, s.1.(a), S.L. 11-3.)

Turbine manufacturing –(22). This definition is added as “an industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. The term does not include the manufacturing of aircraft turbines.”

(Effective July 1, 2010, applies to sales made on or after that date; SB 76, s.1.(a), S.L. 11-3.)

G.S. 105-164.14B(b)(1) – Refunds for Certain Industrial Facilities: This subsection is amended to add paper-from-pulp manufacturing and turbine manufacturing as businesses eligible for refunds. As a result the business order was amended.

(Effective July 1, 2010, applies to sales made on or after that date; SB 76, s.1.(b), S.L. 11-3.)

G.S. 105-164.14B(b)(2) – Minimum Investment Requirement for Certain Industrial Facilities: This subsection is amended to delete references to computer manufacturing facility and strategic partner.

(Effective July 1, 2010, applies to sales made on or after that date; SB 76, s.1.(b), S.L. 11-3.)

G.S. 105-164.14B(g) – Certain Industrial Facilities Refund - Not an Overpayment: This is a new subsection to clarify that taxes refunded under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

(Effective June 27, 2011; SB 267, s. 26(c), S.L. 11-330.)

G.S. 105-164.15A(a)(1) – Effective Date of Tax Changes on Services: This section is amended to clarify the effective date of a new rate or tax rate increase for a service that is provided and billed on a monthly or other periodic basis applies to the first billing period that is at least 30 days after enactment. This change is amended to conform to the Streamlined Sales and Use Tax Agreement.

(Effective June 27, 2011; SB 267, s. 27, S.L. 11-330.)

G.S. 105-164.16(b1) – Returns and Payment of Taxes- Monthly: This subsection is amended by changing the upper threshold for a monthly filer and payer from less than \$15,000 to less than \$20,000.

(Effective October 1, 2011, the upper threshold increases to \$20,000; SB 897, s.31.3.(c), S.L. 10-31. The Department is required to notify taxpayers who are no longer required to make a monthly prepayment of the next month's sales and use tax liability after conducting a review; SB 897, s 31.3.(e), S.L. 10-31.)

G.S. 105-164.16(b2) – Returns and Payment of Taxes- Prepayment: This subsection is amended by changing the lower threshold for monthly with prepayment filer and payer from at least \$15,000 to at least \$20,000.

(Effective October 1, 2011, the lower threshold increases to at least \$20,000; SB 897, s.31.3.(d), S.L. 10-31. The Department is required to notify taxpayers who are no longer required to make a monthly prepayment of the next month's sales and use tax liability after conducting a review; SB 897, s 31.3.(e), S.L. 10-31.)

G.S. 105-164.16(d) – Use Tax on Out-of-State Purchases: This subsection is amended to reorganize tangible personal property other than a boat or an aircraft, digital property, and a service into a list format.

(Effective June 27, 2011; SB 267, s. 21, S.L. 11-330.)

G.S. 105-164.28 – Certificate of Resale: This section is amended to replace the word “resale” with “exemption” in order to conform to the Streamlined Sales and Use Tax Agreement.

(Effective June 27, 2011; SB 267, s. 28, S.L. 11-330.)

G.S. 105-164.41 – Excess Payments, Refunds: This section is repealed.

(Effective June 27, 2011; SB 267, s. 38, S.L. 11-330.)

G.S. 105-164.44B – Transfer to Wildlife Resources Fund of Taxes on Hunting and Fishing Supplies and Equipment: This section is repealed.

(Effective July 1, 2011; HB 200, s. 13.27.(a), S.L. 11-145.)

G.S. 105-164.44F – Distribution of Part of Telecommunications Taxes to Cities:

This section is rewritten to reduce the distributable percentage amounts on telecommunications service and ancillary service to cities and counties. This is to hold the State harmless as a result of the temporary one percent (1%) increase of the “combined general rate” for telecommunications service and ancillary service.

(Effective October 1, 2009 for distributions for months beginning on or after that date; SB 202, s. 27A.2.(c), S.L. 09-451. Effective July 1, 2011, the reduced distributable percentage amounts are repealed; SB 202, s. 27A.2.(f), S.L. 09-451.)

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

This section is rewritten to reduce the distributable percentage amounts on telecommunications service and video programming service to cities and counties. This is to hold the State harmless as a result of the temporary one percent (1%) increase of the “combined general rate” for telecommunications service and video programming service.

(Effective October 1, 2009 for distributions for months beginning on or after that date; SB 202, s. 27A.2.(d), S.L. 09-451. Effective July 1, 2011, the reduced distributable percentage amounts are repealed; SB 202, s. 27A.2.(f), S.L. 09-451.)

G.S. 105-164.44I(b) – Distribution of Part of Sales Tax on Video Programming Service and Telecommunications Service to Counties and Cities: This subsection was amended and specifies that the amount of supplemental PEG channel support that the Secretary must include in each quarterly distribution to a city or county is “one-fourth of the share of each qualifying PEG channel certified by the city or county under G.S. 105-164.44J. The share of each certified PEG channel is the sum of four million dollars (\$4,000,000) and the amount of any funds returned to the Secretary in the prior fiscal year under G.S. 105-164.44J(d) divided by the number of PEG channels certified under G.S. 105-164.44J.”

(Effective July 1, 2011; HB 1691, s.11.(b), S. L. 10-158.) Applies to distributions made on or after July 1, 2011, for quarters starting on or after April 1, 2011.

LOCAL SALES AND USE TAX

G.S. 105-467(a) – Scope of Sales Tax: This section is amended to consolidate the items listed that reference subsections in G.S. 105-164.4. As a result of the amendment, the remaining items are recodified.

(Effective June 27, 2011; SB 267, s. 45, S.L. 11-330.)

G.S. 105-501(b) – Deductions: This amends subsection (b)(1)a. to specifically name the name of the unit (The Local Government Division) that carries out the duties imposed by Article 15. This also adds subsection (b)(1a) to capture the costs for the preceding month for the Department of State Treasurer’s costs for personnel and operations of the Local Government Commission.

(Effective July 1, 2011; HB 200, s. 27.1.(a), S.L. 11-145)

G.S. 105-501(b) – Deductions: This amends the subsection (b)(2)b. to delete one-twelfth of the costs for the preceding year for the Department of State Treasurer’s costs for personnel and operations of the Local Government Commission.

(Effective July 1, 2012; HB 200, s. 27.1.(b), S.L. 11-145.)

G.S. 105-523(b)(2) – County Hold Harmless for Repealed Local Taxes: This amends the definition of “Hold Harmless Threshold” to ensure that a county’s Medicaid service costs for the fiscal years 2008-2009, 2009-2010, and 2010-2011 are determined without regard to the changes made to the Federal Medical Assistance Percentage by section 5001 of the American Recovery and Reinvestment Act of 2009.

(Effective July 31, 2009 and applies to distributions for months beginning on or after October 1, 2008; HB 102, s. 4.(a), S.L. 09-399.)

HIGHWAY USE TAX – ARTICLE 5A

G.S. 105-187.9(b)(1) and (2) – Use of Tax Proceeds: This subsection is temporarily amended to transfer to the General Fund during the 2011-2012 fiscal year the sum of seventy-six million seven hundred twenty-three thousand six hundred and forty-two dollars (\$76,723,642) and to transfer to the General Fund during the 2012-2013 fiscal year the sum of twenty-seven million six hundred thousand dollars (\$27,600,000).

(Effective July 1, 2011; HB 200, s. 2.2.(b), S.L. 11-145.)

G.S. 105-187.9(c) – Use of Tax Proceeds: This subsection is amended to rename the Mobility Fund Transfer to the Prioritization Reserve. The DOT Prioritization Reserve account is within the Highway Trust Fund.

(Effective July 1, 2012; HB 200, s. 28.33.(c), S.L. 11-145.)

G.S. 105-187.9(c) – Use of Tax Proceeds: This subsection is amended further to increase the amount of Prioritization Reserve Transfer from forty-five million dollars (\$45,000,000) to fifty-eight million dollars (\$58,000,000).

(Effective July 1, 2013; HB 200, s. 28.33.(d), S.L. 11-145.)

SCRAP TIRE DISPOSAL TAX –ARTICLE 5B

G.S. 105-187.19(b) – Use of Tax Proceeds: This subsection is temporarily amended for taxes levied during the 2011-2012 fiscal year. The Secretary must credit to the General Fund the sum of two million two hundred sixty-eight thousand nine hundred eighty-nine dollars (\$2,268,989) from the net proceeds that G.S. 105-187.19(b) directs the Secretary of Revenue to credit to the Scrap Tire Disposal Account.

(Effective July 1, 2011; HB 200, s. 2.2.(f), S.L. 11-145.)

WHITE GOODS DISPOSAL TAX –ARTICLE 5C

G.S. 105-187.24 – Use of Tax Proceeds: This subsection is temporarily amended for taxes levied during the 2011-2012 fiscal year. The Secretary must credit to the General Fund the sum of one million nine hundred fifty-one thousand four hundred sixty-five dollars (\$1,951,465) from the net proceeds that G.S. 105-187.24 directs the Secretary of Revenue to credit to the White Goods Management Account.

(Effective July 1, 2011; HB 200, s. 2.2.(g), S.L. 11-145.)

MANUFACTURING FUEL AND CERTAIN MACHINERY AND EQUIPMENT – ARTICLE 5F

G.S. 105-187.51(1)a. – Tax Imposed on Mill Machinery: This subsection is amended to exclude a production company from qualifying for the 1% privilege tax levied on the purchase of mill machinery or mill machinery parts or accessories. Purchases by motion picture and film production companies are subject to the general state and local tax rates.

(Effective January 1, 2011; HB 1973, s. 2.3, S.L. 10-147.)

G.S. 105-187.51B(a)(5) – Tax Imposed on Companies Located at Ports Facilities: This is a new subdivision that imposes the 1% privilege tax with a maximum tax of eighty dollars (\$80.00) per article on a company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

(Effective July 1, 2013 and applies to purchases made on or after that date; HB 751, s. 1, S.L. 11-302.)

G.S. 105-187.51C – Tax Imposed on Datacenter Machinery and Equipment: Changes that occurred as a result of the enactment of *Section 7 of S.L. 2010-91* with an effective date of July 1, 2010 are amended to be effective July 1, 2010 and apply retroactively to sales or purchases made on or after October 1, 2007.

(Effective June 27, 2011; SB 267, s. 24, S.L. 11-330.)

G.S. 105-187.51C(c) – Tax Imposed on Datacenter Machinery and Equipment - Forfeiture: This subsection is amended to replace “combined general rate” with “applicable State and local rates.” In addition, “State” is added to clarify that the State privilege tax previously paid is allowed to be credited against the State sales and use tax due in the event of forfeiture.

(Effective June 27, 2011; SB 267, s. 22, S.L. 11-330.)

G.S. 105-187.51D – Tax Imposed on Machinery at Large Manufacturing and Distribution Facility: This is a new section that imposes the 1% privilege tax with a maximum tax of eighty dollars (\$80.00) per article on purchases of mill machinery, distribution machinery, or parts or accessories (an accessory is not electricity) for mill machinery or distribution machinery for storage, use, or consumption in North Carolina by a large manufacturing and distribution facility. For the purposes of this new section, a 'large manufacturing and distribution facility' is a facility that is to be used primarily for manufacturing or assembling products and distributing finished products for which the

Secretary of Commerce makes a certification that an investment of private funds of at least eighty million dollars (\$80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation. If the required level of investment or employment to qualify as a large manufacturing and distribution facility is not timely made, achieved, or maintained, then the rate provided under this new section is forfeited. If the rate is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the rate provided under this new section is forfeited on all purchases. If the rate is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the rate provided under this new section is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits a rate under this new section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

For purchases of eligible property made on or after July 1, 2012, but before July 1, 2013, a large manufacturing and distribution facility is allowed a refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the purchases as provided in this section. The portion of the State sales and use taxes that may be refunded is equal to the excess of the State sales and use taxes paid over the amount that would have been due had the taxpayer been subject to tax on the eligible property if it were mill machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are barred. Refunds allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

(Effective July 1, 2013 and apply to purchases made on or after that date; HB 751, s. 2, S.L. 11-302; This section expires for sales occurring on or after July 1, 2018; HB 751, s. 2, S.L. 11-302; Effective June 24, 2011 and apply to purchases of eligible property made on or after July 1, 2012, but before July 1, 2013; HB 751, s. 3.(b), S.L. 11-302)

G.S. 105-187.52 – Administration: This section is amended to clarify that the 1% privilege tax is in lieu of State use tax instead of in addition to State use tax. In addition, the section is amended to clarify that a credit is allowed when sales and use, privilege or excise tax, or substantially equivalent tax is due and paid to another state.

(Effective June 27, 2011; SB 267, s. 25.(b), S.L. 11-330.)

911 SERVICE CHARGE FOR PREPAID WIRELESS TELECOMMUNICATIONS SERVICE – ARTICLE 5H

G.S. 105-187.70 – Department Comply with Article 4 of Chapter 62A of the General Statutes: This is a new article that requires the Department of Revenue to comply with the provisions of Article 3 of Chapter 62A of the General Statutes to receive and transfer to the 911 Fund the 911 service charges for prepaid wireless telecommunications service collected on retail transactions occurring in this State. The Department has been tasked with collecting the 911 service charges for prepaid wireless telecommunications service which will include activities such as processing forms and remittances, distributing collections, and auditing.

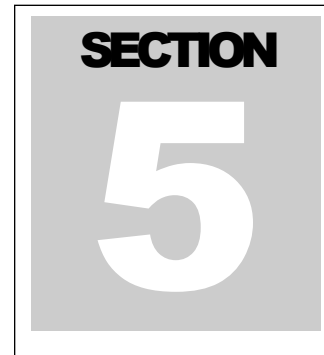
(Effective July 1, 2013 and applies to all retail transactions occurring in this State; HB 571, s. 6, S.L. 11-122.)

MISCELLANEOUS CHANGES

Session Law 2011-345 is an act to extend the sales tax refund allowed to a joint agency created by an interlocal agreement pursuant to G.S. 160A-462 to operate a cable television system that provides video programming services to the same extent allowed to a city under G.S. 105-164.14(c). This session law amends Session Law 2010-153 to extend the refund eligibility period to allow such refunds for the period July 1, 2010 through June 30, 2011.

(Effective June 27, 2011; SB 436, s. 1, S.L. 11-345.)

LOCAL GOVERNMENT



LOCAL GOVERNMENT

Article 60 of Chapter 105 of the General Statutes is repealed:

Repealed the Land Transfer Tax.

(Effective March 31, 2011; HB 92, s. 1, S.L. 2011-18.)

G.S. 105-275. — Property classified and excluded from the tax base:

Exempts any real and personal property that meets each of the following requirements:

- a. It is a contiguous tract of land previously (i) used primarily for commercial or industrial purposes and (ii) damaged significantly as a result of a fire or explosion.
- b. It was donated to a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes by an entity other than an affiliate, as defined in G.S. 105-163.010.
- c. No portion is or has been leased or sold by the nonprofit corporation.

(Effective July 1, 2011; HB 206, s. 1, S.L. 2011-123)

G.S 105-275(12) — Property classified and excluded from the tax base:

Modifies when land used for conservation purposes is to be excluded from property taxes. Amends 105-275(12) by providing that real property that (i) is owned by a nonprofit corporation or association organized to receive and administer lands for conservation purposes, (ii) is exclusively held and used for one or more of the purposes listed in this subdivision, and (iii) produces no income or produces income that is incidental to and not inconsistent with the purpose or purposes for which the land is held and used and if a disqualifying event occurs, provides for the collection of five years of deferred taxes under G.S. 105-277.1F(a).

An application for property tax relief provided by this act may be filed at any time up to and through December 31, 2011 and may be approved at the discretion of the local board under 105-282.1(a1).

(Effective July 1, 2011; HB 350, s. 1-3, S.L. 2011-274)

G.S. 105-277.3 — Agricultural, horticultural, and forestland – Classifications:

Revises the business ownership requirements for present use value. Allows a new business entity to qualify for present use value assessment without waiting four years

as long as the members of the business entity includes a member of the business entity that transferred the property to the new business entity. An application for property tax relief provided by this act may be filed and must be accepted at any time up to and through September 1 for the July 1, 2011, taxable year. Late applicants may be approved under 105-282.1(a1).

(Effective July 1, 2011; HB 123, s. 1, S.L. 2011-9)

G.S. 105-277.9A. — Taxation of property inside certain roadway corridors:

Reduces the property tax owed for improved property inside certain roadway corridors. Adds the following provision which taxes improved real property located within a roadway corridor at 50% of its appraised value. This law is repealed in July of tax year 2021.

(a) Reduced Assessment. – Real property on which a building or other structure is located and that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable at fifty percent (50%) of the appraised value of the property if the property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor.

(Effective July 1, 2011; SB 107, s. 2, S.L. 2011-30.)

G.S. 105-278.6. — Real and personal property used for charitable purposes:

Extends the time period for holding real property as a future site for housing for low or moderate income individuals and families from five years to 10 years. The deferred taxes would be due after 10 years if the property was not used for the intended purpose. This change goes into effect for the 2011 tax year so any property which would have lost its exclusion due to the 5 year time limit now has 5 more years to put the property into use.

(Effective July 1, 2011; HB 417, s. 1, S.L. 2011-368)

G.S. 105-296(c) — Electronic listing of personal property:

If the county has provided for electronic listing of personal property under G.S. 105-310.1, a statement that the county allows electronic listing of personal property and the timetable and procedures for electronic listing is required to be advertised in a newspaper having general circulation in the county and posted in at least five public places in each township in the county.

(Effective June 23, 2011; HB 896, s. 2, S.L. 2011-238)

G.S. 105-304(a1) and (b)(3): An act to facilitate electronic listing of personal property for property tax purposes

These sections are repealed.

(Effective June 23, 2011; HB 896, s. 1, S.L. 2011-238)

G.S. 105-307 — Length of listing period; extension; preliminary work:

Makes technical changes to conform to the repealing of G.S. 105-304(a1) and (b)(3) and to conform to the new section G.S. 105-310.

(Effective June 23, 2011; HB 896, s. 3, S.L. 2011-238)

G.S. 105-310.1 — Electronic listing of personal property:

The following new section G.S. 105-310.1 is added:

- (a) Personal property may be listed by electronic listing as provided in this section.
- (b) The Department of Revenue may establish, after consultation with the counties, the standards and requirements for electronic listing of personal property, including the minimum requirements that must exist before electronic listing will be allowed in a county.
- (c) The board of county commissioners may, by resolution, provide for electronic listing of personal property in accordance with the standards and requirements prescribed by the Department of Revenue. The board of county commissioners may, by resolution, delegate its authority to provide for electronic listing of personal property to the county assessor.
- (d) Definitions. – The following definitions apply in this section:
 - (1) Electronic listing. – The filing by electronic means of the abstract required by G.S. 105-309 and the affirmation required by G.S. 105-310.
 - (2) Electronic. – Defined in G.S. 66-312.

Our office will be publishing, later this year, the standards and requirements for electronic listing of personal property, including the minimum requirements that must exist before electronic listing will be allowed in a county.

(Effective June 23, 2011; HB 896, s. 4, S.L. 2011-238)

G.S. 105-311 — Listing and signing affirmation; use of agents, mail, and electronic listing:

Provides that the abstract must be filed with the assessor on a form approved by the Department of Revenue. Adds a limited liability company to section (a)(1) and allows an agent of the taxpayer authorized by a principal officer of the taxpayer in a manner prescribed by the Department of Revenue to sign the abstract. Requires abstracts to be submitted in person, by mail or electronically if the county has provided for electronic listing of personal property under G.S. 105-310.1.

Provides that in no event shall an abstract submitted by electronic listing be accepted unless the affirmation on the abstract is signed by the individual prescribed in subsection (a) of this section. The affirmation may be signed using an electronic

signature method approved by the Department of Revenue. For the purpose of this Subchapter, abstracts submitted by electronic listing are considered filed when received in the office of the assessor as denoted by timestamps applied by the receiving equipment or programs.

(Effective June 23, 2011; HB 896, s. 5, S.L. 2011-238)

G.S. 105-322 — Board of Equalization and Review:

Increases the efficiency of property tax appeals in Mecklenburg County by allowing the county to divide the board of equalization and review into panels. The provision only applies to Mecklenburg County.

(Effective January 1, 2011; SB 55, s. 3, S.L. 2011-1.)

G.S. 105-330.4 —Tax payments

Adds the following new subsection to make it clear when tax payments are deemed to be timely paid:

(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received in the office of the tax collector. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made.

(Effective June 27, 2011; SB 267, s. 40, S.L. 2011-330.)

G.S. 105-333(14) —Public Service Companies

Amends the definition of a public service company to make it clear that wireless telephone companies are not considered public service companies and must be listed, appraised and assessed at the local county level.

(Effective June 27, 2011; SB 267, s. 41, S.L. 2011-330.)

Effective date of HB 1779

Section 42 clarifies the effective date of the new combined motor vehicle/property tax system is July 1, 2013.

(Effective June 27, 2011; SB 267, s. 42, S.L. 2011-330.)

G.S. 105-360 — Interest on Refunds:

Adds the following new subsection to G.S. 105-360:

(e) When an order of the county board of equalization and review reduces the valuation of property or removes the property from the tax lists and, based on the order, the taxpayer has paid more tax than is due on the property, the taxpayer is entitled to receive interest on the overpayment in accordance with this subdivision. An overpayment of tax bears interest at the rate set under subsection (a) of this section from the date the interest begins to accrue until a refund is paid. Interest accrues from

the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed.

(Effective January 1, 2011; SB 76, s. 3, S.L. 2011-3.)

G.S. 105-378(d) — Enforcement and Collection Delayed Pending Appeal:

When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the **county board of equalization and review** or the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer.

(Effective January 1, 2011; SB 76, s. 3, S.L. 2011-3.)

G.S. 105-375— In rem method of foreclosure.

Increases the fee for administrative costs from \$50.00 to \$250.00 in the processing of an In rem foreclosure action.

(Effective July 1, 2011; SB 537, s. 1, S.L. 2011-352.)

G.S. § 105A-2(6) Debt Setoff:

Authorizes a housing authority to collect unpaid delinquent debt by setting off the debt against a state income tax refund due a tenant or former tenant of the housing authority.

(Effective October 1, 2011; HB 339, s. 1, S.L. 2011-365)

G.S. 153A-340(b)(2) — Annexation of Farm Property:

For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.
- e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency."

G.S. 160A-58.54 — Annexation of Farm Property:

Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property."

(Effective June 27, 2011; HB 168, s. 1 and 3, S.L. 2011-363)

G.S. 160A-58.55 — (i) Petition to Deny Annexation Ordinance. – The following procedures shall apply to this subsection:

(1) Upon receipt of the resolution of intent and a list of property owners of the real property located within the area, the county tax assessor shall prepare a list of the real property parcels within the area, and forward it to the board of elections in the county where a majority of the parcels proposed for annexation are located. The board of elections shall prepare petitions for property owners of the real property located within the area described in the resolution of intent to sign opposing the annexation ordinance.

(Effective July 1, 2011; HB 845, s.9, S.L. 2011-396)

G.S. 160A-340 — Provision of Communications Service by Cities:

To protect jobs and to promote investment, it is necessary to ensure that the State does not indirectly subsidize competition with private industry through actions by cities and to ensure that where there is competition between the private sector and the State, directly or through its subdivisions, it exists under a framework that does not discourage private investment and job creation;

A communications network owned or operated by a city or joint agency shall be exempt from property taxes. However, each city possessing an ownership share of a communications network and a joint agency owning a communications network shall, in lieu of property taxes, pay to any county authorized to levy property taxes the amount which would be assessed as taxes on real and personal property if the communications network were otherwise subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the case of taxes on other property.

A city-owned communications service provider shall pay to the State, on an annual basis, an amount in lieu of taxes that would otherwise be due the State if the communications service was provided by a private communications service provider, including State income, franchise, vehicle, motor fuel, and other similar taxes.

(Effective May 21, 2011; HB 129, s. 1-7, S.L. 2011-84)

G.S. 160A-536 — Municipal Service Districts

Authorizes cities to establish a municipal service district for the purpose of converting private residential streets to public streets and to authorize related community associations to transfer planned community property to cities.

(Effective May 12, 2011; SB 281, s. 2, S.L. 2011-72.)

G.S. 161-31(b) — Payment of Delinquent Property Taxes:

Adds Alamance, Brunswick, Buncombe, and Yancey counties to the list of counties authorized to require the payment of delinquent property taxes before recording deeds conveying property.

(Effective April 20, 2011; HB 68, s. 1, S.L. 2011-45.)

Chapter 162

Authorizes Alleghany County, Jackson County, the Town of Grover and the Town of Swansboro to levy an additional three percent room occupancy and tourism development tax and to make other administrative changes.

(Effective June 17, 2011; HB 96, s. 1-6, S.L. 2011-170)

A local act only in effect for Alamance County and Orange County.

An act to authorize Alamance County and Orange County to recommend the location of nine percent of the common boundary between Alamance County and Orange County subsequent to the 2010/2011 resurvey of the historic Orange County/Alamance County boundary line as described in the 1849 survey establishing Alamance County.

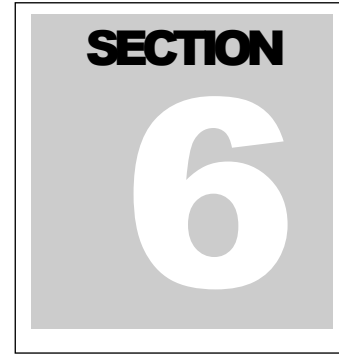
(Effective May 25, 2011; SB 200, s. 1-7, S.L. 2011-87.)

A local act only in effect for Alamance County and Orange County.

An act to establish the common boundary between Alamance County and Orange County subsequent to the 2010/2011 resurveys of the transitioned properties, as authorized by the North Carolina General Assembly by Session Law 2010-61 enabling the changes in the historic Orange County/Alamance County boundary line as described in the 1849 survey establishing Alamance County, and to amend some sections of Session Law 2010-61.

(Effective May 25, 2011; SB 201, s. 1-12, S.L. 2011-88.)

GENERAL ADMINISTRATION



GENERAL ADMINISTRATION

G.S. 105-228.90(a) – Technical Change, Scope and Definitions: This subsection was reorganized and “Chapter 105A of the General Statutes” was added to the list of statutes to which Article 9 applies.

(Effective June 27, 2011; SB 267, s. 37, S.L. 11-330.)

G.S. 105-228.90(b)(1b) – Code Defined: This subsection was amended to update the reference to the Internal Revenue Code from May 1, 2010 to January 1, 2011.

(Effective March 17, 2011; HB 124, s. 1, S.L. 11-5.)

G.S. 105-228.90(b)(4b) – NAICS Defined: This subsection was amended to add the definition of NAICS. This is defined as “The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.”

(Effective June 27, 2011; SB 267, s. 31.(a), S.L. 11-330.)

G.S. 105-236(a)(2) – Penalties: This subsection was amended to require a written notification by the Department before the Failure to Obtain a License penalty may be assessed for licenses per G.S. 105-449.65 or G.S. 105-449.131.

(Effective June 27, 2011; SB 267, s. 32, S.L. 11-330.)

G.S. 105-236(a)(5)f. – Penalties; Negligence: Subdivision 2 of this subsection was repealed because it referenced G.S. 105-130.6, wherein the Secretary was granted authority to adopt permanent rules. G.S. 105-130.6 was also repealed.

(Effective January 1, 2012; HB 619, s. 5, S.L. 11-390.)

G.S. 105-239.1(a) – Clarifying Change; Lien and Liability: This subsection was amended to delete the word “legatee” from the list of transferees subject to a lien for

any taxes owing by the transferor of property when the transferor is insolvent. This change is a result of the legislature's effort to standardize and modernize terms.

(Effective June 24, 2011; SB 252, s. 69, S.L. 11-284.)

G.S. 105-241.7(a) – Procedure for Obtaining a Refund: This subsection was rewritten to clarify that the Department will refund an overpayment of tax when it discovers the overpayment prior to the expiration of the statute of limitations. The Department is considered to have “discovered” an overpayment of tax when:

1. An automated process flags a return, indicating that it requires further review.
2. An employee of the Department reviews the return and determines there is an overpayment.
3. An employee of the Department audits a taxpayer and determines there is an overpayment.

(Effective March 9, 2011; SB 97, s. 1, S.L. 11-4.)

G.S. 105-241.9(b) – Procedure for Proposing an Assessment, Time Limit: This subsection was amended to require any waiver of time limitations for proposing assessments to be completed in writing before the statute of limitations expires.

(Effective June 27, 2011; SB 267, s. 34, S.L. 11-330.)

G.S. 105-242(b) – Attachment and Garnishment: This subsection was amended to permit the Secretary to submit quarterly to a financial institution information that identifies a taxpayer and the amount of debt owed to the Department. The financial institution will search its records and inform the Secretary if it holds any intangible property that belongs to a taxpayer on the list. The Department must reimburse the financial institution for its cost in providing the information.

(Effective January 1, 2011; SB 897, s. 31.8.(h), S.L. 10-31.)

G.S. 105-242.1 – Garnishment by Electronic Means: This section was amended to permit the Department to send notice to a garnishee by electronic means. The Department and the garnishee must have an agreement that establishes protocol for transmitting the notice and provides an explanation of the liability of the garnishee for tax owed by a taxpayer and an explanation of the garnishee's responsibility concerning the notice. The electronic notice must contain the taxpayer's name, social security number or federal identification number, and the amount of tax, interest and penalties owed by the taxpayer. If the garnishee is a financial institution, it must respond within 20 days. All other garnishees must respond within 30 days after receiving the notice. A notice of garnishment sent to a financial institution is released when the financial institution complies with the notice. For all other garnishees, notice of garnishment is released when the Department sends the garnishee a notice of release that includes the name and identification number of the taxpayer.

(Effective June 30, 2010; SB 897, s. 31.8.(i), S.L. 10-31.)

G.S. 105-244.1 – Conforming Change; Cancellation of Certain Assessments: This section was amended to replace the term “armed forces” with “Armed Forces of the United States”. The legislation was enacted to make all references to federal and state military organizations in the general statutes proper and uniform.

(Effective June 20, 2011; HB 262, s. 73, S.L. 11-183.)

G.S. 105-256(a)(7) – Publications Prepared by the Secretary: This subsection was repealed.

(Effective June 27, 2011; SB 267, s. 35, S.L. 11-330.)

G.S. 105-256(a)(9) – Publications Prepared by the Secretary: This subsection was amended to delete the requirement that a final decision of the Secretary in a contested tax case be redacted prior to publication.

(Effective June 27, 2011; SB 267, s. 33.(a), S.L. 11-330.)

G.S. 105-259(b)(7) – Conforming Change; Disclosure: This subsection was amended to replace the term “Crime Control and Public Safety” with “Public Safety.”

(Effective July 1, 2011; HB 200, s. 19.1(g), S.L. 11-145.)

G.S. 105-259(b)(9) – Conforming Change; Disclosure: This subsection was amended to replace the term “Employment Security Commission” with “Division of Employment Security.”

(Effective November 1, 2011; SB 532, s. 3.9, S.L. 11-401.)

G.S. 105-259(b)(9a) – Conforming Change; Disclosure: This subsection was amended to replace the term “Employment Security Commission” with “Division of Employment Security.”

(Effective November 1, 2011; SB 532, s. 3.9, S.L. 11-401.)

G.S. 105-259(b)(15) – Conforming Change; Disclosure: This subsection was amended to replace “Crime Control and Public Safety” with “Public Safety”, to replace the term “Department of Correction” with “Division of Adult Correction of the Department of Public Safety”, to replace the term “Divisions of Community Corrections” with “Section of Community Corrections of the Division of Adult Correction” and to replace the term “Alcohol Law Enforcement Division” with “Division of Alcohol Law Enforcement.”

(Effective July 1, 2011; HB 200, ss.19.1(g),19.1(h) 19.1(k),19.1(n), S.L. 11-145.)

G.S. 105-259(b)(27) – Disclosure: This subsection was amended to replace term “report” with “publication.”

(Effective June 27, 2011; SB 267, s. 33.(b), S.L. 11-330.)

G.S. 105-259(b)(41) – Conforming Change; Disclosure: This subsection was amended to replace the term “Environment and Natural Resources” with “Agriculture and Consumer Services”.

(Effective July 1, 2011; HB 200, s. 13.25(nn), S.L. 11-145.)

G.S. 105-264(d) – Effect of Secretary’s Interpretation of Revenue Laws: This subsection was added to permit the Secretary to charge a fee for providing specific written advice. The Secretary may adopt a fee schedule ranging from \$100 to a maximum of \$5,000. The fee must be applied to the cost of providing the specific advice. The Secretary has authority to waive the fee.

(Effective January 1, 2012; HB 619, s. 6, S.L. 11-390.)

G.S. 105-269.3 – Conforming Change; Enforcement of Subchapter V and Fuel Inspection Tax: This section was amended to replace the term “Crime Control and Public Safety” with “Public Safety.”

(Effective July 1, 2011; HB 200, s. 19.1(g), S.L. 11-145.)