



2015 TAX LAW CHANGES



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

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PREFACE

The **2015 Tax Law Changes** is designed for use by the North Carolina Department of Revenue personnel and is available to others as a resource document. It provides a brief summary of legislative tax changes made by prior General Assemblies that take effect for tax year 2015, as well as changes made by the 2015 General Assembly, regardless of effective date. This document includes changes to the tax law only and not other legislation that affect the Department of Revenue.

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

Jocelyn Andrews
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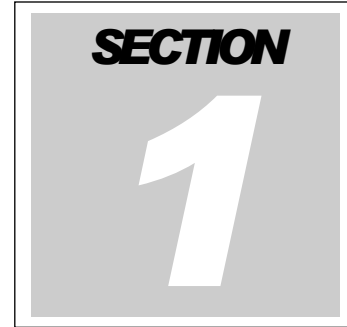
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PERSONAL TAXES



INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

G.S. 105-134.1 – Definitions: This section was amended to add new subsection (15a) to define “surviving spouse.” When North Carolina used federal taxable income as the starting point for determining North Carolina taxable income, a specific reference to “surviving spouse” was not necessary because the amount of a taxpayer’s standard deduction was part of federal taxable income. Beginning with tax year 2012, North Carolina began using federal adjusted gross income (“agi”) as the starting point for determining North Carolina taxable income and the standard deduction is subtracted from agi. The filing status of “surviving spouse” was inadvertently omitted from the definitions adopted to conform to the federal filing statuses. The term “surviving spouse” is defined by reference to Code section 2(a).

(Effective retroactively for taxable years beginning on or after January 1, 2012, and before January 1, 2014; HB 41, s. 2.20(c), S.L. 15-6.)

G.S. 105-134.6(a2) – Deduction Amount: This subsection was amended to make conforming changes regarding the filing status of “surviving spouse.” See the explanation for this change in **G.S. 105-134.1** above. A surviving spouse has the same standard deduction as taxpayers married filing jointly.

(Effective retroactively for taxable years beginning on or after January 1, 2012, and before January 1, 2014; HB 41, s. 2.20(d), S.L. 15-6.)

G.S. 105-134.6A(h) – Definitions: This subsection provides definitions applicable to the bonus asset basis provisions in this section. The definitions were rewritten to clarify that the phrase “subject to tax under Part 2 or 3 of Article 4” applies only to a beneficiary of a transferor, not to the other kinds of owners in a transferor.

(Effective for taxable years beginning on or after January 1, 2013; HB 41, s. 2.8(a), S.L. 15-6.)

G.S. 105-153.3 – Definitions: This section was amended to renumber existing definitions in subsections (18) through (20) as (19) through (21) and to add new subsection (18) to define “surviving spouse.” When North Carolina used federal taxable income as the starting point for determining North Carolina taxable income, a specific reference to “surviving spouse” was not necessary because the amount of a taxpayer’s standard deduction was part of federal taxable income. Beginning with tax year 2012,

North Carolina began using federal adjusted gross income (“agi”) as the starting point for determining North Carolina taxable income and the standard deduction is subtracted from agi. The filing status of “surviving spouse” was inadvertently omitted from the definitions adopted to conform to the federal filing statuses. The term “surviving spouse” is defined by reference to Code section 2(a).

(Effective for taxable years beginning on or after January 1, 2014, HB 41, s. 2.20(a), S.L. 15-6.)

G.S. 105-153.4 – North Carolina taxable income defined: This section was amended to make technical and clarifying changes. The reference to G.S. 105-134.6A, which was repealed effective for taxable years beginning on or after January 1, 2014, was removed. Subsection (d) was amended to clarify that the income of a partnership that is apportionable to multiple states is allocated and apportioned in accordance with G.S. 105-130.4. The statute previously referred to a ratio rather than to the rules of allocation and apportionment.

(Effective for taxable years beginning on or after January 1, 2015; HB 41, s. 2.22(a), S.L. 15-6.)

G.S. 105-153.5 – Modifications to adjusted gross income: This section was amended to renumber subsection (d), “S Corporations,” as subsection (e), to rewrite two subparagraphs of subdivision (a)(2), and to add new subsection (d) with three subdivisions to decouple from federal law for tax year 2014 in four instances.

Subparagraph (a)(2)a allows as an itemized deduction the amount allowed as a deduction for charitable contributions under section 170 of the Code for that taxable year. As amended, this subparagraph allows a taxpayer who has attained the age of 70 1/2 and who elected to exclude from adjusted gross income for tax year 2014 a qualified charitable distribution from an individual retirement plan to claim the amount of the distribution as a charitable contribution. See subdivision (d)(3) for a corresponding addition to adjusted gross income.

Subparagraph (a)(2)b allows as an itemized deduction the amount allowed as a deduction for interest paid or accrued during the taxable year with respect to any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued on real estate. As amended, this subparagraph prohibits a taxpayer from including an amount paid for mortgage insurance premiums in the deduction for interest paid or accrued with respect to any qualified residence for tax year 2014.

New subdivision (d)(1) requires a taxpayer to make an addition to adjusted gross income for the amount excluded from the taxpayer’s gross income for the discharge of qualified principal residence indebtedness during tax year 2014.

New subdivision (d)(2) requires a taxpayer to make an addition to adjusted gross income equal to the amount of the taxpayer’s federal deduction for qualified tuition and related expenses.

New subdivision (d)(3) requires a taxpayer to make an addition to adjusted gross income for the amount excluded from the taxpayer's gross income for tax year 2014 for a qualified charitable distribution from an individual retirement plan because the person had attained age 70 1/2.

(Decoupling adjustments in (a)(2)a and (a)(2)b and new (d)(1), (d)(2), and (d)(3) and renumbering of section (d) as section (e) effective March 31, 2015; SB 20, s. 1.3, S.L. 15-2.)

G.S. 105-153.5(a)(1) – Standard Deduction: This subdivision was amended twice. The first amendment makes conforming changes regarding the filing status of “surviving spouse.” See the explanation for this change in **G.S. 105-153.3** above. A surviving spouse has the same standard deduction as taxpayers who are married filing jointly. The second amendment increased the standard deduction for each filing status for taxable years beginning on or after January 1, 2016. The standard deduction for each filing status is:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$15,500
Head of Household	\$12,400
Single	\$ 7,750
Married, filing separately	\$ 7,750

(First amendment effective retroactively for taxable years beginning on or after January 1, 2014; HB 41; s. 2.20(b), S.L. 15-6; second amendment effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.16(a), S.L. 15-241.)

G.S. 105-153.5(a)(2) – Itemized deduction amount: In addition to the amendments to this subdivision that decouple from federal law for tax year 2014 (see G.S. 105-153.5 above), this subdivision was amended to add titles to existing subparagraphs a and b, to make a technical change to subparagraph b, and to add new subparagraph c. Subparagraph a is titled “Charitable Contributions.” Subparagraph b is titled “Mortgage Expense and Property Tax.” New subparagraph c is titled “Medical and Dental Expense” and allows a taxpayer to claim as part of the taxpayer’s North Carolina itemized deductions the amount allowed as a deduction for medical and dental expenses under section 213 of the Code for that taxable year. The deduction is equal to total allowable medical and dental expenses after reduction for any reimbursements of those expenses, to the extent those expenses exceed a percentage of adjusted gross income. The percentage is 10% for a taxpayer under age 65 at the close of the tax year; 7.5% for a taxpayer age 65 or older at the close of the tax year. The 7.5% adjustment is scheduled to change to 10% for tax year 2017.

(Effective for taxable years beginning on or after January 1, 2015; HB 97, s. 32.16(b), S.L. 15-241.)

G.S. 105-153.5(b)(9) – Eugenics Sterilization Payments: This new subdivision allows a deduction for the amount paid to the taxpayer during calendar year 2015 from the Eugenics Sterilization Compensation Fund as compensation to a qualified recipient under the Eugenics Asexualization and Sterilization Compensation Program under Part 30 of Article 9 of Chapter 143B of the General Statutes. This subdivision expires for taxable years beginning on or after January 1, 2016. Therefore, payments received in calendar year 2014 or calendar years after 2015 will not qualify for the deduction.

(Effective for taxable years beginning on or after January 1, 2015; SB 402, s. 6.18.(b), S.L. 13-360.)

G.S. 105-153.5(c1) – Other Additions: This new subsection requires S corporations, partnerships, estates, and trusts to make an addition on their income tax returns for any amounts deducted on their federal income tax returns as state, local, or foreign income tax. Prior to the enactment of S.L. 2013-316, these entities were required to make the addition because of a cross reference to the additions required to be made by individual income taxpayers. As a result of S.L. 2013-316, the individual income tax law no longer followed federal law with respect to itemized deductions and the addition in the individual income law was repealed. This inadvertently eliminated the addition for S corporations, partnerships, estates, and trusts even though those entities still deducted those amounts for North Carolina income tax purposes by virtue of the federal starting point used in determining those entities' North Carolina taxable income. This change restores the addition that was required prior to taxable year 2014.

(Effective for taxable years beginning on or after January 1, 2015; HB 41, s. 2.22(b), S.L. 15-6.)

G.S. 105-153.6(c) – Section 179 Expense: This subsection requires a taxpayer who places Code section 179 property in service during a taxable year to make an addition to adjusted gross income equal to 85% of the amount by which the taxpayer's expense deduction under Code section 179 exceeds what the expense deduction would have been using dollar and investment limitations set out in this subsection. The subsection was amended to establish the dollar and investment limitations for taxable year 2014 to be \$25,000 and \$200,000, respectively.

(Effective March 31, 2015; SB 20, s. 1.2(b), S.L. 15-2.)

G.S. 105-153.6(h) - Definitions: This subsection provides definitions applicable to the bonus asset basis provisions in this section. The definitions were rewritten to clarify that the phrase "subject to tax under Part 2 or 3 of Article 4" applies only to a beneficiary of a transferor, not to the other kinds of owners in the transferor.

(Effective for taxable years beginning on or after January 1, 2014; HB 41, s. 2.8(b), S.L. 15-6.)

G.S. 105-153.7 – Individual Income Tax Imposed: This section was amended twice to decrease the income tax rate imposed on the North Carolina taxable income of every individual. The first amendment reduces the individual income tax rate for taxable years

beginning on or after January 1, 2015 to 5.75% from 5.8%. The second amendment reduces the individual income tax rate for tax years beginning on or after January 1, 2017 to 5.499%.

(First amendment effective for taxable years beginning on or after January 1, 2015; HB 998, s. 1.2.(a), S.L. 13-316; second amendment effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.16(c), S.L. 15-241.)

WITHHOLDING TAX – ARTICLE 4A

G.S. 105-163.2 – Employers Must Withhold Taxes: Subsections (b) and (e) of this section were amended to require the Secretary of Revenue, when establishing withholding tables and alternative withholding methods for withholding from wages, to design tables and alternative methods so that the tax rate for withholding is one-tenth of one percent more than the individual income tax rate established in G.S. 105-153.7. As a result, the withholding tax rate on wages for 2016 will be 5.85%.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.16A(a), S.L. 15-241.)

G.S. 105-163.2A(b) – Withholding Required From Pension Payments: This subsection was amended to clarify that a pension payer must file a return, pay the withheld taxes, and report the amount withheld from pension payments in the same time and manner as an employer would from wages. See G.S. 105-163.7 below for more information.

(Effective for taxable years beginning on or after January 1, 2015 and applies to information returns required to be filed with the Secretary in 2016 for the 2015 taxable year; HB 117, s. 7.1(c), S.L. 15-259.)

G.S. 105-163.2A(c) – Pension Payers Must Withhold Taxes: This subsection was amended to change the default method of calculating the amount of tax to withhold if the recipient does not file an allowance certificate. The default was changed from married with three exemptions to single with no allowances.

(Effective January 1, 2015, and applies to payments made on or after that date; HB 1050, s. 14.6(a), S.L. 14-3.)

G.S. 105-163.2B – North Carolina State Lottery Commission must withhold taxes: This section was amended to clarify that the North Carolina State Lottery Commission must file a return, pay the withheld taxes, and report the amount withheld from payments of lottery winnings in the same time and manner as an employer files a return, pays the withheld taxes, and reports the amount withheld from wages. See G.S. 105-163.7 below for more information.

(Effective for taxable years beginning on or after January 1, 2015 and applies to information returns required to be filed with the Secretary in 2016 for the 2015 taxable year; HB 117, s. 7.1(d), S.L. 15-259.)

G.S. 105-163.3(b) – Exemptions from Requirement for Certain Payers to Withhold Taxes: This subsection provides exemptions from the requirement that a payer withhold income tax from payments to nonresident contractors or ITIN holders. The subsection was amended to add a fourth exemption. Subdivision (b)(4) exempts payers from the requirement to withhold if the compensation is paid to an alien, as described by 8 U.S.C. § 1101(a)(15)(H)(ii)(a), that is not subject to federal income tax withholding under section 1441 of the Code. These aliens are commonly referred to as H-2A agricultural workers.

The description of “alien” in 8 U.S.C. § 1101(a)(15)(H)(ii)(a) reads as follows:

“[A]n alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26, agriculture as defined in section 203(f) of title 29, and the pressing of apples for cider on a farm, of a temporary or seasonal nature.”

(Effective for taxable years beginning on or after January 1, 2015; SB 513, s. 2(a), SL. 15-263.)

G.S. 105-163.3(c) – Returns and G.S. 105-163.3(d) – Returns, Annual Statement, and Reports for Certain Payers That Must Withhold Taxes: Subsection (c) was repealed and its language was incorporated in subsection (d). Subsection (d) was amended to clarify that a payer that is required to withhold income tax from payments to nonresident contractors or ITIN holders must file a return, pay the withheld taxes, and report the amount withheld in the same time and manner as an employer files a return, pays the withheld taxes, and reports the amount withheld from wages. See G.S. 105-163.7 below for more information.

(Effective for taxable years beginning on or after January 1, 2015 and applies to information returns required to be filed with the Secretary in 2016 for the 2015 taxable year; HB 117, s. 7.1(e), S.L. 15-259.)

G.S. 105-163.7 – Statement to employees; information to Secretary: This section was amended to simplify compliance with the requirement for withholding agents to submit the annual reconciliation (Form NC-3) and the Department’s copies of wage and tax statements and to help the Department combat tax refund fraud. The amendments require withholding agents to file Form NC-3 and the Department’s copies of wage and tax statements on or before January 31 of the succeeding year and in an electronic format prescribed by the Secretary. The Secretary may, upon a showing of good cause, waive the electronic submission requirement.

(Effective for taxable years beginning on or after January 1, 2015 and applies to information returns required to be filed with the Secretary in 2016 for the 2015 taxable year; HB 117, s. 7.1(a), S.L. 15-259.)

G.S. 105-163.8 – Liability of Withholding Agents: This section imposes liability on any withholding agent that fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary. Section 2.2(a) of S.L. 14-3 amended G.S. 105-153.5(a) and (a)(1) to clarify that the standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Internal Revenue Code. These taxpayers include married individuals who file a separate return for federal income tax purposes and their spouse itemizes deductions, nonresident aliens, or individuals filing a short-year return because of a change in their accounting period. The change was effective for taxable years beginning on or after January 1, 2014 but did not become law until May 29, 2014.

Uncodified language was adopted to prohibit the assessment of liability against a withholding agent for the amount of tax the agent failed to withhold to the extent the amount of tax not withheld was created or increased by the changes in section 2.2 of S.L. 14-3.

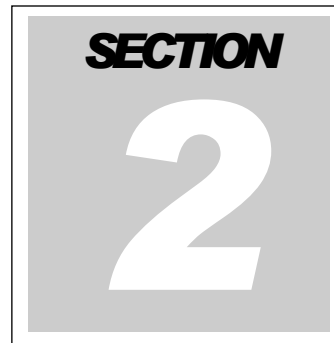
(Effective April 9, 2015 and applies to payroll periods beginning on or after January 1, 2014, and before January 1, 2015; HB 41, s. 2.9(a), S.L. 15-6.)

G.S. 105-163.15 – Failure by Individual to Pay Estimated Income Tax; Interest: This section imposes interest on an individual who underpays estimated tax as required by this section. Section 2.2(a) of S.L. 14-3 amended G.S. 105-153.5(a) and (a)(1) to clarify that the standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Internal Revenue Code. These taxpayers include married individuals who file a separate return for federal income tax purposes and their spouse itemizes deductions, nonresident aliens, or individuals filing a short-year return because of a change in their accounting period. The change was effective for taxable years beginning on or after January 1, 2014 but did not become law until May 29, 2014.

Uncodified language was adopted to prohibit the assessment of interest with respect to the underpayment of estimated tax to the extent the underpayment was created or increased by the changes in section 2.2 of S.L. 14-3.

(Effective April 9, 2015 and applies to taxable years beginning on or after January 1, 2014, and before January 1, 2015; HB 41, s. 2.9(a), S.L. 15-6.)

CORPORATE TAX



FRANCHISE TAX – ARTICLE 3

G.S. 105-114(b) – Total Assets Defined: The 2015 General Assembly amended G.S. 105-122(b) to simplify how the franchise tax is calculated. As part of this change, new subdivision (5) was added to G.S. 105-114(b) to define “total assets.” Subdivision (5) defines “total assets” as “the sum of all cash, investments, furniture, fixtures, equipment, receivables, intangibles, and any other items of value owned by a person or a business entity.” “Total assets” is used in the computation of a corporation’s “net worth” tax base, formally known as the corporation’s “capital stock, surplus, and undivided profits” tax base.

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(a), S.L. 15-241.)

G.S. 105-114.1(b) and (d) – Computation of Franchise Tax for Limited Liability Companies: These subsections make conforming changes to replace the phrase “capital stock, surplus, and undivided profits” with the term “net worth.” The amendment was needed to update the statute to the new language found in G.S. 105-122(b).

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(e), S.L. 15-241.)

G.S. 105-120.2 – Franchise Tax Increased for Holding Companies: The franchise tax on a holding company was amended to increase the annual minimum franchise tax due from thirty-five dollars (\$35) to two hundred dollars (\$200). In addition, a holding company that calculates its franchise tax liability based on the corporation’s “net worth” is limited to a franchise tax of one hundred fifty thousand dollars (\$150,000), previously seventy-five thousand dollars (\$75,000). Other changes in this section include replacing the phrase “capital stock, surplus, and undivided profits” with the term “net worth” to conform with the changes made to G.S. 105-122(b).

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(b), S.L. 15-241.)

G.S. 105-122 – Computation of Net Worth for General Business Corporations: The 2015 General Assembly amended G.S. 105-122(b) to simplify how the franchise tax is calculated for domestic and foreign corporations. As part of the tax simplification changes, the “capital stock, surplus, and undivided profits” tax base was renamed the “net worth” tax base.

As re-written, a corporation's "net worth" is measured by the corporation's total assets without regard to the deduction for accumulated depreciation, depletion, or amortization less its total liabilities, computed in accordance with generally accepted accounting principles, ("GAAP"), as of the end of the corporation's taxable year. If the corporation does not maintain its books and records in accordance with GAAP, then the corporation's net worth is computed in accordance with the accounting method used by the corporation for federal income tax purposes, so long as the method fairly reflects the corporation's net worth for franchise tax purposes. The corporation's net worth is subject to the following adjustments:

- A deduction for accumulated depreciation, depletion, and amortization as determined in accordance with the method used for federal tax purposes.
- An addition for indebtedness the corporation owes to a parent, subsidiary, affiliate or a noncorporate entity in which the corporation or affiliated group of corporations owns directly or indirectly more than 50% of the capital interests of the noncorporate entity. The amount added back to the corporation's net worth may be further adjusted if part of the capital of the creditor is capital borrowed from a source other than a parent, a subsidiary, or an affiliate. The debtor corporation may deduct a proportionate part of the indebtedness based on the ratio of the borrowed capital of the creditor to the total assets of the creditor. For purposes of this subdivision, borrowed capital does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced by a certificate of deposit, a passbook, a cashier's check, a certified check, or other similar document.
- If the creditor corporation is subject to North Carolina franchise tax, the creditor corporation may deduct the amount of indebtedness owed to it by a parent, subsidiary, or affiliated corporation to the extent that such indebtedness has been added by the debtor corporation.
- A deduction for the cost of treasury stock.

In addition, the following items previously excludable from the "capital stock, surplus, and undivided profits" tax base were repealed:

- Cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons and pollution abatement equipment.
- Cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste.
- Cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas.
- All assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons.

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(c) and (d), S.L. 15-241.)

G.S. 105-122(b) and (d) – Name Change; Department of Environmental Quality:

These subsections were rewritten to make conforming changes to replace any reference to the “Department of Environmental and Natural Resources” with the “Department of Environmental Quality.” The changes were needed because the 2015 General Assembly updated the title of Article 7 of Chapter 143B of the General Statutes.

(Effective July 1, 2015; HB 97, s. 14.30(u), S.L. 15-241.)

G.S. 105-122(b1) – Franchise Tax Definitions: Subsection (b1) was amended to add or update the following terms used in the computation of the net worth tax base: “affiliate”, “affiliated group”, “capital interest”, “governing law”, “indebtedness”, “noncorporate entity”, “parent”, and “subsidiary.”

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(d), S.L. 15-241.)

G.S. 105-122(d) – Minimum Franchise Tax Increased for General Business

Corporations: The franchise tax law pertaining to domestic and foreign corporations was amended to increase the minimum franchise tax due from thirty-five dollars (\$35) to two hundred dollars (\$200).

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(d), S.L. 15-241.)

G.S. 105-122(d1) – Natural Gas Tax Credit Repealed: The subsection, which provided a franchise tax credit for payments made for natural gas under Article 5E, was repealed because it was no longer needed. The tax credit should have been repealed effective July 1, 2014, when Article 5E was repealed.

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(c), S.L. 15-241.)

G.S. 105-125(b) – Computation of Franchise Tax for Certain Investment

Companies: This subsection was rewritten to make conforming changes to replace the phrase “capital stock, surplus, and undivided profits” with the term “net worth.” This amendment was needed to update the statute to the new language found in G.S. 105-122(b).

(Effective January 1, 2017 for taxes due on or after that date; HB 97, s. 32.15(f), S.L. 15-241.)

BUSINESS AND ENERGY TAX CREDITS – ARTICLE 3B

G.S. 105-129.16A(a) – Placed in Service for Credit for Investing in Renewable

Energy Property: This subsection was amended to clarify that the tax credit for investing in renewable energy property may be taken by a taxpayer even if the taxpayer was not the party that placed the property into service in this State. Prior to the amendment, there was a conflict in the law regarding whether or not the lessor, as owner of the property, qualified to claim the credit if the lessee placed the property into service in this State during the taxable year. As rewritten, the law clarifies that the

lessor may claim the NC tax credit as long as the lessee places the property into service in this State during the taxable year.

(Effective April 9, 2015; HB 41, s. 2.6, S.L. 15-6.)

G.S. 105-129.16A(e) – Sunset for Investing in Renewable Energy Projects: For most taxpayers, the credit for investing in renewable energy property is repealed effective for renewable energy property placed into service on or after January 1, 2016. However, the 2015 General Assembly amended subsection (e) of the statute to provide a safe harbor to extend the tax credit for renewable energy projects that are substantially completed by January 1, 2016. To qualify for the safe harbor, taxpayers must meet the requirements detailed in new subsection (f) of the statute.

(Effective April 30, 2015; SB 372, s. 1, S.L. 15-11.)

G.S. 105-129.16A(f) – Delayed Sunset for Investing in Renewable Energy Projects: Subsection (f) extends the sunset for renewable energy property placed in service prior to January 1, 2017 for taxpayers that meet certain requirements. A taxpayer is eligible for the delayed sunset if the taxpayer filed an application with the Department of Revenue and paid an application fee on or before October 1, 2015, and meets both of the following conditions on or before January 1, 2016:

- Incur at least the minimum percentage of the cost of the project
- Complete at least the minimum percentage of the physical construction of the project

For a project that has less than 65 megawatts of capacity, the project must be 80% complete by January 1, 2016. For a project that has 65 megawatts of capacity or more, the project must be 50% complete by January 1, 2016.

To verify the taxpayer met the minimum percentage of incurred costs and partial construction required to be eligible for the sunset extension, the taxpayer must also provide the following additional documentation to the Secretary of Revenue on or before March 1, 2016:

- A written certification signed by the taxpayer affirming that the costs incurred and the partial physical construction prior to January 1, 2016, meets the required percentage. *(See Form NC-478EX-1)*
- A notarized copy of a written report prepared by a licensed engineer stating that the physical construction of the project prior to January 1, 2016, meets the required percentage. *(See Form NC-478EX-2)*
- A notarized copy of a written report prepared by a licensed CPA stating that the total cost paid or incurred for the project prior to January 1, 2016, meets the required percentage. *(See Form NC-478EX-3)*

(Effective April 30, 2015; SB 372, s. 1, S.L. 15-11.)

HISTORIC REHABILITATION TAX CREDITS – ARTICLE 3D

G.S. 105-129.36A – Name Change; Department of Natural and Cultural Resources:

This section was rewritten to make conforming changes to replace any reference to the “Department of Cultural Resources” with the “Department of Natural and Cultural Resources.” The change was needed because the 2015 General Assembly updated the title of Article 2 of Chapter 143B of the General Statutes.

(Effective July 1, 2015; HB 97, s. 14.30(s), S.L. 15-241.)

MILL REHABILITATION TAX CREDITS – ARTICLE 3H

G.S. 105-129.75 – Sunset Date Modified for Mill Rehabilitation Tax Credit: This section was rewritten to add an expiration date of January 1, 2023, to eligibility certificates obtained under Article 3H from the State Historic Preservation Office. Prior to this change, there was not a sunset date for mill rehabilitation projects if the taxpayer submitted an application for an eligibility certificate to the State Historic Preservation Office on or before January 1, 2015.

(Effective September 18, 2015; HB 97, s. 32.3(b), S.L. 15-241.)

TAX CREDITS FOR GROWING BUSINESSES – ARTICLE 3J

G.S. 105-129.81 – Name Change; Department of Environmental Quality: This section was rewritten to make conforming changes to replace a reference to the “Department of Environmental and Natural Resources” with the “Department of Environmental Quality.” The changes were needed because the 2015 General Assembly amended the title of Article 7 of Chapter 143B of the General Statutes.

(Effective July 1, 2015; HB 97, s. 14.30(u), S.L. 15-241.)

G.S. 105-129.83 – Name Change; Secretary of Environmental Quality: This section was rewritten to make conforming changes to replace a reference to the “Secretary of Environmental and Natural Resources” with the “Secretary of Environmental Quality.” The change was needed because the 2015 General Assembly amended the title of Article 7 of Chapter 143B of the General Statutes.

(Effective July 1, 2015; HB 97, s. 14.30(v), S.L. 15-241.)

HISTORIC REHABILITATION TAX CREDIT – ARTICLE 3L

New Article 3L – Historic Preservation Tax Credits Investment Program: This new Article was enacted to replace the tax credits generally available under Article 3D of Chapter 105 which expired for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2015.

G.S. 105-129.100 - Credit for Rehabilitating Income-Producing Historic Structure:

Subsection (a) creates a new tax credit for expenditures to rehabilitate in North Carolina a certified historic structure as defined under Section 47 of the Internal Revenue Code. The base amount of the credit is equal to the sum of the following:

- 15% of expenses from \$0 to \$10 million
- 10% of expenses from \$10 million to \$20 million

The statute provides for enhanced incentives for historic structures located in development tier one or tier two areas, and for historic structures located in a targeted investment site.

Subsection (b) includes a special provision that allows a pass-through entity that qualifies for the credit for rehabilitating income-producing historic property to allocate the credit among any of its owners in its discretion as long as the owner's adjusted basis in the pass-through entity, as determined under the Internal Revenue Code, at the end of the taxable year in which the historic structure is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner.

Subsection (c) sets out the definitions that apply to the credit for rehabilitating income-producing historic structures. Definitions are provided for the terms "certified historic structure", "development tier area", "eligibility certification", "eligible targeted investment site", "pass-through entity", "qualified rehabilitation expenditures", "State Historic Preservation Officer", and "targeted investment."

Subsection (d) sets out the maximum credit allowed to a taxpayer that qualifies for the credit for rehabilitating an income-producing historic structure. As written, the amount of credit allowed with respect to qualified rehabilitation expenditures for an income-producing certified historic structure is limited to four million, five hundred thousand dollars (\$4,500,000).

Subsection (e) includes a special provision that allows, in specific situations, the amount of qualifying rehabilitation expenditures that were incurred by a taxpayer in tax years 2014 and 2015 to be used in the computation of the income-producing tax credit. The specific requirements are as follows:

- 1) The certified historic structure must be located in a Tier 1 or a Tier 2 county.
- 2) The certified historic structure must be owned by a city.
- 3) The qualifying rehabilitation activity must have commenced in 2014.
- 4) A certificate of occupancy must be issued on or before December 31, 2015.
- 5) The taxpayer must meet all of the other conditions listed in G.S. 105-129.100.

G.S. 105-129.101 – Credit for Rehabilitating Non-Income-Producing Historic

Structure: Subsection (a) creates a tax credit for rehabilitating non-income-producing historic structures located in this State for taxpayers that are not allowed a federal credit under Internal Revenue Code Section 47. As written, a taxpayer that has rehabilitation expenses of at least ten thousand dollars (\$10,000) for a State-certified historic

structure located in North Carolina is allowed a credit equal to fifteen percent (15%) of the rehabilitation expenses.

Subsection (b) limits the amount of credit allowed with respect to rehabilitation expenses for a non-income producing certified historic structure to twenty-two thousand, five hundred dollars (\$22,500) per discrete property parcels. A taxpayer can claim a non-income producing historic credit no more than once in any five year period. In addition, a special provision is provided for a taxpayer that is a transferee of a State-historic structure for which rehabilitation expenses are made. Specifically, the taxpayer as transferee is allowed a credit only if the transfer takes place before the structure is placed in service. In this event, no other taxpayer may claim the non-income producing tax credit.

Subsection (c) sets out the definitions that apply to the credit for rehabilitating non-income-producing historic structures. Definitions are provided for the terms: “certified rehabilitation”, “discrete property parcel”, “placed in service”, “rehabilitation expenses”, “State-certified historic structure”, and “State Historic Preservation Officer.”

G.S. 105-129.102 – Rules and Fees: This section allows the North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, to establish rules and fees needed to administer any certification process required by Article 3L.

G.S. 105-129.103 – Tax Credit and Limitations: Subsection (a) provides that the tax credits allowed in Article 3L may be claimed against one of the following taxes: (1) franchise tax, (2) income tax, or (3) gross premiums tax. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which it is claimed. The election is binding, including any carryforwards of unused credits.

Subsection (b) provides that a taxpayer may claim a credit allowed by Article 3L on the return filed for the taxable year in which the certified historic structure is placed into service. When an income-producing certified historic structure is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year.

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

Subsection (d) requires a taxpayer to forfeit a portion of the credit for rehabilitating an income-producing historic structure if the taxpayer is required to recapture a portion of the corresponding federal credit because the taxpayer disposed of the rehabilitated property within five years of placing the property in service. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

Subsection (e) requires an owner of a pass-through entity to forfeit a portion of the credit for rehabilitating an income-producing historic structure if the owner disposes of more than one-third of the owner's interest in the pass-through entity within five years from the date the rehabilitated property is placed in service. The forfeiture amount is 100% if the ownership interest is reduced in the first year and decreases by 20% each year thereafter.

Subsection (f) provides two exceptions to the requirement to forfeit a portion of the credit for change in ownership. The credit is not forfeited if the change in ownership is the result of either the death of the owner or a merger, consolidation, or similar transaction.

Subsection (g) provides that a taxpayer or an owner of a pass-through entity that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. Taxes and interest due as a result of forfeiture are due 30 days after the date the credit is forfeited. A taxpayer or an owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties in G.S. 105-236.

Subsection (h) requires a taxpayer claiming a tax credit under Article 3L to provide any information required by the Secretary of Revenue, including, but not limited to, a copy of the certification obtained from the State Historic Preservation Office, verifying that the historic structure has been rehabilitated in accordance with the requirements set out in Article 3L. A taxpayer claiming a tax credit under Article 3L must also maintain and make available for inspection any information or records required by the Secretary. The burden of eligibility for a credit under Article 3L and the amount of credit allowed to a taxpayer rests upon the taxpayer.

Subsection (i) prohibits a taxpayer from claiming a credit under Article 3L with respect to any activity for which the taxpayer claimed a credit under Article 3D or 3H.

G.S. 105-129.104 – Report and Tracking: Subsection (a) requires the Department of Revenue to include in the economic incentives required by G.S. 105-256, the following information itemized by taxpayer:

- The number of taxpayers that took the credits allowed in this Article.
- The amount of rehabilitation expenses with respect to which credits were taken.
- The total cost to the General Fund of the credits taken.

Subsection (b) requires the Department to publish the following additional information in the economic incentive report:

- The total amount of tax credits claimed and the total amount of tax credits taken against current taxes, by type of tax, during the relevant tax year.
- The total amount of tax credits carried forward, by type of tax.

G.S. 105-129.105 – Sunset: Article 3L expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2020.

(All changes to Article 3L, except the amendment to add G.S. 105-129.100(e), effective January 1, 2016; HB 97, s. 32.3(a), S.L. 15-241. Amendment to add G.S. 105-129.100(e), effective October 1, 2015; SB 119, s. 54.5(a), S.L. 15-264.)

CORPORATION INCOME TAX – ARTICLE 4, PART 1

G.S. 105-130.3 – Corporate Income Tax Rate Reduction: Effective for tax years beginning on or after January 1, 2016, the tax rate for C corporations is decreased from 5% to 4%.

(Effective January 1, 2016; HB 97, s. 32.13(a), S.L. 15-241.)

G.S. 105-130.3C – Corporation Income Tax Rate Reduction Trigger: The 2015 General Assembly amended G.S. 105-130.3C to make changes to the rate reduction trigger originally adopted during the 2013 session. As originally enacted, if the State's General Fund tax revenue for fiscal year end 2016 equaled or exceeded twenty billion nine hundred seventy-five million dollars (\$20,975,000,000), the corporate income tax rate would have fallen to a rate of 3%. As amended, the corporate income tax rate will decrease to 3% the year after the next rate reduction trigger is met. The rate reduction trigger will be met when the amount of net General Fund tax collections in a fiscal year exceeds \$20,975,000,000.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(b), S.L. 15-241 and HB 259, s. 10.1(f), S.L. 15-268.)

G.S. 105-130.4(i) – Single Sales Factor Phase In: North Carolina is phasing in a one hundred percent (100%) sales factor for purposes of apportioning a corporation's net income attributable to North Carolina. Currently, the apportionment formula consists of the sum of the property factor, the payroll factor, and twice the sales factor divided by four.

Effective for tax years beginning on or after January 1, 2016, the sales factor will be triple-weighted. As such, all apportionable income of a corporation must be apportioned to North Carolina using an apportionment formula that consists of the sum of the property factor, the payroll factor, and three times the sales factor divided by five.

Effective for tax years beginning on or after January 1, 2017, the sales factor will be quadruple-weighted. As such, all apportionable income of a corporation must be apportioned to North Carolina using an apportionment formula that consists of the sum of the property factor, the payroll factor, and four times the sales factor divided by six.

Effective for tax years beginning on or after January 1, 2018, all apportionable income of a corporation must be apportioned to North Carolina using only the sales factor. In addition, the following statutes are repealed because they are no longer needed:

- G.S. 105-130.4(a)(6) Definition of Public Utility
- G.S. 105-130.4(a)(4) Definition of an Excluded Corporation
- G.S. 105-130.4(j) Property Factor
- G.S. 105-130.4(k) Payroll Factor
- G.S. 105-130.4(r) Special Apportionment Rule for Excluded Corporations and Public Utilities
- G.S. 105-130.4(s1) Special apportionment Rule for a Qualified Capital Intensive Corporation.

(The amendment to triple-weight the sales factor is effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.14(a), S.L. 15-241.)

(The amendment to quadruple-weight the sales factor is effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.14(b), S.L. 15-241.)

(The amendment to a sales factor only apportionment formula and the repeal of the various special apportionment formulas is effective for taxable years beginning on or after January 1, 2018; HB 97, s. 32.14(c) and (d), S.L. 15-241.)

Revenue Laws Study Committee Market-Based Sourcing: The 2015 General Assembly has directed the Revenue Laws Study Committee to study “market-based sourcing” for purposes of calculating the North Carolina sales factor for receipts other than from tangible property.

To help the Committee determine the effect of market-based sourcing on corporate taxpayers, each corporation that satisfied the following requirements with respect to tax year 2014 is required to file an informational report with the Department:

- 1) An apportionable income greater than \$10,000,000.
- 2) A North Carolina apportionment factor less than 100%.
- 3) Apportionment formula based in whole or in part on the sales factor.

The Department must publish guidelines for computing the sales factor based on market-based sourcing on or before February 1, 2016. The Department’s guidelines must be based on the most recent model regulations developed by the Multi-State Tax Commission with respect to market-based sourcing and be consistent with the following:

- 1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.
- 2) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.
- 3) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.
- 4) In the case of tangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is “used in this State” if that good or service is purchased by a consumer in this State.

- 5) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is “used in this State” if the geographic area includes all or part of this State.

The report is due by April 15, 2016, and must include:

- The corporation’s 2014 apportionment percentage used on the corporation’s 2014 North Carolina corporate tax return.
- The corporation’s 2014 apportionment percentage as calculated under the Department’s guidelines.
- The corporation’s primary NAICS code as adopted by the United States Office of Management and Budget as of December 31, 2007.

A taxpayer may not request an extension of time to file the informational report. The Secretary must assess a civil penalty of five thousand dollars (\$5,000) for failure to timely file an informational report required under this section. The Secretary may reduce or waive the penalty as provided by law.

(Effective September 18, 2015; HB 97, s. 34.14A(a-f), S.L. 15-241 and HB 259, s 10.2, S.L. 15-268.)

G.S. 105-130.5(a)(25) – Addition to Federal Taxable Income for Net Interest to a Related Member: This subdivision was added and requires a taxpayer to add to federal taxable income the amount of “net interest expense” to a related member interest expense as determined under the new G.S. 105-130.7B. For a definition of “net interest expense,” see G.S. 105-130.7B(b)(3).

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(d), S.L. 15-241.)

G.S. 105-130.5(b) – Deductions from Federal Taxable Income: This subsection was amended to eliminate the following corporate income tax deductions:

- G.S. 105-130.5(b)(6) The deduction for the amortization in excess of depreciation allowed on the cost of sewage or waste treatment plant as provided under G.S. 105-130.10.
- G.S. 105-130.5(b)(7) The deduction for depreciation of emergency facilities acquired before 1955.
- G.S. 105-130.5(b)(12) The deduction for reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees.
- G.S. 105-130.5(b)(13) The deduction for eligible income of an international banking facility.

- G.S. 105-130.5(b)(15) The deduction for the amount paid as marketing assessments on tobacco grown by the corporation in North Carolina.
- G.S. 105-130.5(b)(18) The deduction for interest, investment earnings, and gains of a trust if the settlers are two or more manufacturers that signed a settlement agreement with North Carolina.
- G.S. 105-130.5(b)(19) The deduction for the amount paid to taxpayers from the Hurricane Floyd Reserve Fund.
- G.S. 105-130.5(b)(22) The deduction for the amount paid to taxpayers from the Disaster Relief Reserve Fund for hurricane relief.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(c), S.L. 15-241.)

G.S. 105-130.5(b)(3a) – Deduction from Federal Taxable Income for Expenses

Attributable to Dividend Income: This amendment deletes a reference to G.S. 105-130.6A. The 2015 General Assembly repealed G.S. 105-130.6A which was the statute that clarified how expenses were to be attributed to dividends received that were not taxed for North Carolina corporate income tax purposes. As previously written, G.S. 105-130.6A provided a limit on the potential tax liability of certain taxpayers because of the attribution of expenses to dividends. As amended, the 2015 General Assembly set out a general rule for attributing expenses related to dividends for all corporations. As re-written, the adjustment for expenses attributed to dividends not taxed for North Carolina income tax purposes cannot exceed fifteen percent (15%) of the dividends.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(d), S.L. 15-241.)

G.S. 105-130.5(b)(4) – Deduction from Federal Taxable Income for a Net Economic

Loss: The 2014 General Assembly amended this subdivision to provide a transitional deduction from the State's net economic loss deduction pursuant to G.S. 105-130.8 to a new State net loss deduction pursuant to G.S. 105-130.8A.

Under G.S. 105-130.8, a corporation was allowed to deduct from federal taxable income a net economic loss deduction equal to the amount by which allowable deductions for the year other than prior year losses exceed income from all sources in the year, including nontaxable income. The net economic loss deduction could be carried forward 15 years; any loss carryforward was required first to be offset by nontaxable income, including allowable deductions.

Under G.S. 105-130.8A, a corporation is allowed to deduct from federal taxable income any unused portion of a net economic loss, as determined on December 31, 2014. The amount of the net economic loss, as determined on December 31, 2014, is a static amount. Any unused portion of a net economic loss carried forward to taxable years beginning on or after January 1, 2015, will not have to be first offset by nontaxable income. Because a net economic loss can only be carried forward for fifteen years, the

deduction allowed under G.S. 105-130.5(b)(4) expires for taxable years beginning on or after January 1, 2030.

(Effective January 1, 2015; HB 1050, s. 1.1(a), S.L. 14-3.)

G.S. 105-130.5(b)(4a) – Deduction from Federal Taxable Income for a State Net Loss: This subdivision provides a deduction from federal taxable income for a taxpayer's State net loss as calculated under G.S. 105-130.8A.

(Effective January 1, 2015; HB 1050, s. 1.1(a), S.L. 14-3.)

G.S. 105-130.5(b)(11) – Deduction from Federal Taxable Income for Ordinary and Necessary Business Expenses: Corporations are allowed to deduct from federal taxable income ordinary and necessary business expenses that were reduced or disallowed under the Internal Revenue Code because the corporation claimed a federal tax credit in lieu of the deduction. Prior to the amendment, the deduction was allowed only to the extent that a similar credit was not allowed under North Carolina income tax law for the same amount. The 2015 General Assembly repealed this limitation because it was determined that it was not needed for corporate income tax purposes.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(d), S.L. 15-241.)

G.S. 105-130.5(b)(28) – Deduction from Federal Taxable Income for Qualified Interest Expense to a Related Member This subdivision was added and allows a corporation to deduct the amount of "qualified interest expense" to a related member as determined under new G.S. 105-130.7B. For a definition of "qualified interest expense," see G.S. 105-130.7B(b)(4).

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(d), S.L. 15-241.)

G.S. 105-130.5(c)(3) – Adjustment to Federal Taxable Income for Attribution of Expenses: This amendment deletes a reference to G.S. 105-130.6A. The 2015 General Assembly repealed G.S. 105-130.6A which was the statute that clarified how expenses were to be attributed to dividends received that were not taxed for North Carolina corporate income tax purposes. As previously written, G.S. 105-130.6A provided a limit on the potential tax liability of certain taxpayers because of the attribution of expenses to dividends. As amended, the 2015 General Assembly set out a general rule for attributing expenses related to dividends for all corporations. As re-written, the adjustment for expenses attributed to dividends not taxed for North Carolina income tax purposes cannot exceed fifteen percent (15%) of the dividends.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(d), S.L. 15-241.)

G.S. 105-130.5(c)(5) – Adjustment to Federal Taxable Income: This subdivision, which allowed a deduction for interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, was eliminated.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(c), S.L. 15-241.)

G.S. 105-130.5B(c) – Section 179 Expense: This subsection requires a taxpayer who places Code section 179 property in service during a taxable year to make an addition to adjusted gross income equal to 85% of the amount by which the taxpayer’s expense deduction under Code section 179 exceeds what the expense deduction would have been using dollar and investment limitations set out in this subsection. The subsection was amended to establish the dollar and investment limitations for taxable year 2014 to be \$25,000 and \$200,000, respectively.

(Effective March 31, 2015; SB 20, s. 1.2(b), S. L. 15-2.)

G.S. 105-130.6A – Attributing Expenses to Dividends: This section, which clarified how expenses were to be attributed to dividends received that were not taxed for North Carolina corporate income tax purposes, was repealed. See G.S. 105-130.5(c)(3).

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(e), S.L. 15-241.)

G.S. 105-130.7B – Related Member Limitation on Qualified Interest Provisions: This new section limits a corporation’s related member interest expense deduction to the amount of “qualified interest expense.” For a definition of “qualified interest expense,” see G.S. 105-130.7B(b)(4). This section does not limit the Secretary’s authority to adjust a taxpayer’s net income as it relates to payments to or charges by a parent, subsidiary, or affiliated corporation in excess of fair compensation in an intercompany transaction under G.S. 105-130.5(a)(9).

Subsection (b) provides definitions that apply to this new section. In addition to the definitions in G.S. 105-130.7A, the following additional definitions apply to this new section:

- 1) Adjusted taxable income – State net income of the taxpayer determined without regard to this section and other adjustments as the Secretary may by rule provide.
- 2) Bank – One or more of the following, or a subsidiary or affiliate of one or more of the following:
 - a. A bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended.
 - b. One or more of the following entities incorporated or chartered under the laws of this State, another state, or the United States:

1. A bank. This term has the same meaning as defined in G.S. 53C-1-4.
 2. A savings bank. This term has the same meaning as defined in G.S. 54C-4.
 3. A savings and loan association. This term has the same meaning as defined in G.S. 54B-4.
 4. A trust company. This term has the same meaning as defined in G.S. 53C-1-4.
- 3) Net interest expense – The excess of the interest paid or accrued by the taxpayer to a related member during the taxable year over the amount of interest from a related member includible in the gross income of the taxpayer for the taxable year.
- 4) Qualified interest expense – The amount of net interest paid or accrued to a related member in a taxable year not to exceed 30% of the taxpayer’s adjusted taxable income. This limitation does not apply to interest paid or accrued to a related member if one or more of the following applies:
- a. Tax is imposed by the State under this Article on the related member with respect to the interest.
 - b. The related member pays a net income tax or gross receipts tax to another state with respect to the interest income.
 - c. The related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States and that country taxes the interest income at a rate equal to or greater than G.S. 105-130.3.
 - d. The related member is a bank.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(f), S.L. 15-241.)

G.S. 105-130.8 – Net Economic Loss: This section, which provided the provisions for determining a corporation’s net economic loss deduction, was repealed by the 2014 General Assembly.

(Effective January 1, 2015; HB 1050, s. 1.1(b), S.L. 14-3.)

G.S. 105-130.8A – Net Loss Provisions: The 2014 General Assembly added this section to replace the net economic loss deduction with a State net loss deduction.

Subsection (a) defines a “State net loss” as the amount by which allowable deductions for the year, other than prior year losses, exceed gross income under the Internal Revenue Code for the year adjusted as provided in G.S. 105-130.5. Adjustments under G.S. 105-130.5 include items that increase or decrease a taxpayer’s federal taxable income, such as, the add back of taxes based on net income, the deduction for U.S. obligation interest, and adjustments made when the State decouples from federal

accelerated depreciation and expensing. Additionally, if the taxpayer is a multi-state corporation with business activity within and without North Carolina, the State net loss must be allocated and apportioned in the year of the loss in accordance with the provisions of G.S. 105-130.4.

Subsection (b) governs when a taxpayer can carryforward a State net loss incurred in a prior taxable year and deduct it in the current taxable year, limited to the following:

- 1) The loss must be incurred in one of the preceding 15 taxable years.
- 2) Any loss carried forward must be applied to the next succeeding taxable year before any portion of the State net loss can be carried forward and applied to a subsequent taxable year.

Subsection (c) requires the Department to apply federal regulations adopted under the Code in determining the extent to which a loss survives a merger or acquisition. As specifically stated in G.S. 105-130.8A, the Secretary must apply the standards contained in regulations adopted under sections 381 and 382 of the Code in the determination of a loss surviving a merger or an acquisition. Note: The repeal of G.S. 105-130.8 removes the applicability of North Carolina case law that governed the extent to which a net economic loss survives in a merger or an acquisition.

Subsection (d) sets out the information a taxpayer must provide to the Secretary in order to substantiate the amount of State net loss it deducts during the taxable year. Specifically, a taxpayer must maintain and make available for inspection all records necessary to determine and verify the amount of State net loss deduction. In addition, the Secretary or the taxpayer may redetermine an item of income or loss originating in a closed year for the purpose of determining the correct amount of a State net loss carried forward to a year that is open.

Subsection (e) provides that for taxable years beginning before January 1, 2015, a taxpayer is allowed a net economic loss as calculated under the provisions of G. S. 105-130.8. For tax years beginning before January 1, 2015, the Secretary and the taxpayer must use G.S. 105-130.8 to determine the amount of net economic loss incurred and carried forward to tax years beginning on or after January 1, 2015. Beginning January 1, 2015, the net economic loss becomes a static amount. As of January 1, 2015, any unused portion of a net economic loss carried forward to tax will not have to be first offset by nontaxable income. Because a net economic loss can only be carried forward for 15 years, subsection (e) expires for taxable years beginning on or after January 1, 2030.

(Effective January 1, 2015; HB 1050, s. 1.1(c), S.L. 14-3.)

G.S. 105-130.10 – Amortization of Air-Cleaning Devices, Waste Treatment Facilities and Recycling Facilities: This statute was rewritten to make conforming changes to replace a reference to the “Department of Environmental and Natural Resources” with the “Department of Environmental Quality.” The amendment was

needed because the 2015 General Assembly amended the title of Article 7 of Chapter 143B of the General Statutes.

(Effective July 1, 2015; HB 97, s. 14.30(u), S.L. 15-241.)

G.S. 105-130.10 – Amortization of Air-Cleaning Devices, Waste Treatment Facilities and Recycling Facilities: This section provided the provisions to determine the amount of the deduction for amortization of air-cleaning devices, waste treatment facilities and recycling facilities permitted under G.S. 105-130.5(b)(6). This section, along with G.S. 105-130.5(b)(6), was repealed.

(Effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.13(e), S.L. 15-241.)

INSURANCE GROSS PREMIUMS TAX – ARTICLE 8B

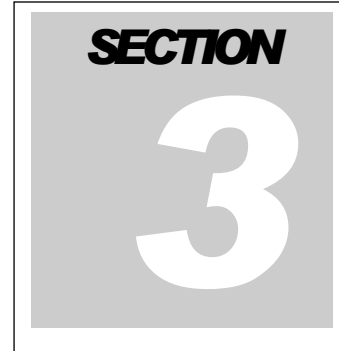
G.S. 58-6-25 – Insurance Regulatory Charge: The percentage rate to be used in calculating the insurance regulatory charge under this statute is six and one-half percent (6.5%) for the 2015 and 2016 calendar years. This charge is a percentage of gross premiums tax liability.

(Effective September 18, 2015; HB 97, s. 20.1, S.L. 15-241.)

G.S. 105-228.4A(c) – Captive Insurance Company Tax Return Due Date: The subsection was amended to change the due date of the gross premium tax return filed by captive insurance companies from March 1st to March 15th following the end of the calendar year.

(Effective May 29, 2014; HB 1050, s. 14.11(b), S.L. 14-3.)

EXCISE TAX



PRIVILEGE TAXES – ARTICLE 2

G.S. 105-102.3 – Banks: The privilege tax on banks and banking associations operating in this State is repealed.

(Effective July 1, 2016; HB 97; s. 32.13(g); S.L. 2015-241)

G.S. 105-102.6 – Publishers of newsprint publications: The privilege tax on newsprint publishers is repealed.

(Effective October 22, 2015; HB 765; s. 4.11(a); S.L. 2015-286)

TOBACCO PRODUCTS TAX – ARTICLE 2A

G.S. 105-113.35(d) – Manufacturer’s Option: Subsection (d) is rewritten to include a manufacturer of vapor products to apply to the Secretary to be relieved of paying the tax imposed on vapor products shipped to either wholesale or retail dealers.

(Effective June 1, 2015; HB 41, s. 2.5(a), S.L. 2015-6)

Uncodified provision – Provides that the Department of Revenue may enter into an agreement with the Eastern Band of Cherokee Indians with regard to the excise tax on tobacco products. The agreement must be approved by the Tribal Council and signed by the Principal Chief on behalf of the Eastern Band of Cherokee Indians as well as by the Secretary on behalf of the Department. The duration of any agreement is to be specified within its terms.

(Effective September 30, 2015; HB 912; s. 2; S.L. 2015-262)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES – ARTICLE 2C

G.S. 105-113.80 – Excise taxes on beer; wine, and liquor: Subsection (c) of the statute is amended to specify that the new category of antique spirituous liquor is subject to the 30% excise tax.

(Effective September 1, 2015; HB 909, s. 1(f), S.L. 2015-98)

G.S. 105-113.68 – Definitions; scope: Subsection (a) is amended to add a new subdivision to read:

“(4a) Antique spirituous liquor. – Defined in G.S. 18B-101”

Note: G.S. 18B-101 defines antique spirituous liquor as a spirituous liquor that has not been (1) in production or bottled in the last 20 years, (2) is in the original manufacturer’s unopened container, (3) is not owned by a distillery, and (4) is not otherwise available for purchase by an ABC Board except through special order.

(Effective September 1, 2015; HB 909, s. 1(g), S.L. 2015-98)

G.S. 105-113.68 – Definitions; scope: Subsection (a) is amended to add a new subdivision to read:

“(4a) Distillery permittee. – A distillery that holds a distillery permit issued by the ABC Commission under G.S. 18B-1105.”

(Effective October 1, 2015; HB 909, s. 4(b), S.L. 2015-98)

G.S. 105-113.80 – Excise taxes on beer; wine, and liquor: Subsection (c) of the statute is amended to specify that liquor sold in permitted distilleries is subject to the 30% excise tax.

(Effective October 1, 2015; HB 909, s. 4(c), S.L. 2015-98)

G.S. 105-113.81(e) – Tasting: This subsection is rewritten to include resident distilleries (along with resident breweries and wineries) as not required to remit excise taxes on malt beverages, wine, or the newly added category of spirituous liquor that is given free at tastings on the manufacturer’s premises.

(Effective October 1, 2015; HB 909, s. 4(d), S.L. 2015-98)

G.S. 105-113.83(a) – Liquor: This subsection was amended to clarify that distillery permittees are required to submit collected excise taxes monthly to the Secretary.

(Effective October 1, 2015; HB 909, s. 4(e), S.L. 2015-98)

GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C

Uncodified provision – Sets the motor fuel excise tax rate at thirty-six cents (36¢) a gallon.

(Effective April 1, 2015; SB 20, s. 2.1, S.L. 2015-2)

G.S. 105-449.80 – Tax rate: The statute was rewritten to set the motor fuel excise tax rate at a flat rate per the following schedule:

Time Period	Tax Rate per gallon
January 1, 2016 – June 30, 2016	Thirty-five cents (35¢)
July 1, 2016 – December 31, 2016	Thirty-four cents (34¢)
Calendar year beginning January 1, 2017	Thirty-four cents (34¢), multiplied by a percentage*
Calendar years beginning January 1, 2018	Amount for preceding year, multiplied by a percentage*

*The percentage is 100% plus or minus the sum of the following: (1) the percentage change in population for the applicable calendar year as estimated under G.S. §143C-2-2, multiplied by 75%; (2) the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI), multiplied by 25%.

Notice must be sent to affected taxpayers of the tax rate to be in effect for each calendar year beginning January 1.

(Effective March 31, 2015; SB 20, s. 2.2(a); S.L. 2015-2)

G.S. 105-449.107(c) – Sales Tax Amount: This statute is rewritten to remove the reference to using the wholesale price to determine the sales and cost price of motor fuel for calculating the amount of State sales and use tax to be deducted from a motor fuel excise tax refund.

(Effective January 1, 2016; SB 20, s. 2.2(b) and 2.3; S.L. 2015-2)

G.S. 105-449.125 – Distribution of tax revenue among various funds and accounts: This statute is rewritten to adjust the distribution of revenue from the motor fuel excise tax as follows:

- Decreasing the amount allocated to the Highway Fund from seventy-five percent (75%) to seventy-one percent (71%);
- Increasing the amount allocated to the Highway Trust Fund from twenty-five percent (25%) to twenty-nine percent (29%); and

(Effective July 1, 2015; HB 97, s. 29.27B(a); S.L. 2015-241)

G.S. 105-449.125 – Distribution of tax revenue among various funds and accounts: This statute is rewritten to adjust the distribution of revenue from the motor fuel excise tax by discontinuing the three thirty-seconds (3/32) fractional amount allocated to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(Effective June 30, 2016; HB 97, s. 29.27B(b); S.L. 2015-241)

G.S. 105-449.126 – Distribution of part of Highway Fund allocation to Wildlife Resources Fund and Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund: Subsection (b) of this statute is amended to increase the amount of motor fuel tax rate division to the shallow draft fund from one sixth of one percent (1/6 of 1%) to one percent (1%).

The enacting Session Law also mandates that if the amount of revenue budgeted for the 2015-2016 fiscal year for transfer to the Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund is not met, the Department shall transfer to the Fund the amount necessary to fully fund the budgeted amount.

(Effective July 1, 2015; HB 97, s. 29.4(a); S.L. 2015-241)

ALTERNATIVE FUEL – ARTICLE 36D

G.S. 105-449.130 – Definitions: This statute was rewritten to add a new subsection to the definitions statute under Article 36D.

(1h) – Gas gallon equivalent of liquefied propane gas. This subsection is added and defines “gas gallon equivalent of liquefied propane gas” as “[t]he energy equivalent of 5.75 pounds of liquefied propane gas.”

(Effective January 1, 2016; SB 448, s. 1, S.L. 2015-224)

G.S. 105-449.136(a) – Rate: This subsection was rewritten to clarify that the tax on liquefied propane gas is imposed on each gas gallon equivalent of liquefied propane gas.

(Effective January 1, 2016; SB 448, s. 2, S.L. 2015-224)

OTHER RELATED STATUTES

G.S. 14-401.18A – Sale of certain e-liquid containers prohibited. New subsections are added to the statute. The first defines child-resistant packaging, E-liquid, E-liquid containers, and vapor product. Other subsections make it a Class A1 misdemeanor for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in North Carolina any E-liquid product containing nicotine unless the product container constitutes child resistant packaging and the packaging states the product contains nicotine. A violator of this statute shall be liable for damages to any person injured as a result of the violation.

(Effective December 1, 2015; SB 286, s. 1, S.L. 2015-141)

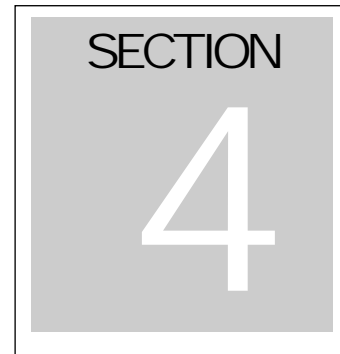
G.S. 105-129.16A – Credit for investing in renewable energy property: Subsection (a) was rewritten to clarify that a taxpayer seeking a credit for constructing, purchasing, or leasing renewable energy property must place the property in service in North Carolina during the taxable year to receive the credit.

(Effective April 9, 2015; HB 41, s. 2.6, S.L. 2015-6)

G.S. 150B-2 – Definitions: Deletes from subsection (8a)j reference to the variable component of the motor fuel excise tax for the establishment of the interest rate applying to tax assessments.

(Effective January 1, 2016; SB 20, s. 2.2(c), S.L. 2015-2)

SALES AND USE TAX



SALES AND USE TAX - ARTICLE 5

G.S. 105-164.3 – Definitions: The 2014 and 2015 General Assembly added new defined terms and amended multiple definitions for existing defined terms. The changes and their effective dates are as follows:

Aviation Gasoline – (1h). This term is added and is defined in G.S. 105-449.60.

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 4.1.(a), S.L. 15-259.)

Consumer – (5). The definition for this term is amended to add “supplier.”

(Effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after that date; HB 1050, s. 7.1.(a), S.L. 14-3.)

Jet Fuel – (16b). This term is added and is defined in G.S. 105-449.60.

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 4.1.(a), S.L. 15-259.)

Operator – (25a). This term is added and is defined as a “person provided with the lease or rental of tangible personal property or a motor vehicle to operate, drive, or maneuver the tangible personal property or motor vehicle and whose presence, skill, knowledge, and expertise are necessary to bring about a desired or appropriate effect. The person must do more than calibrate, test, analyze, research, probe, or monitor the tangible personal property or motor vehicle.” This definition was added to clarify the term as used in the definition of “lease or rental” in G.S. 105-164.3(17).

(Effective September 30, 2015; HB 117, s. 6.(a), S.L. 15-259.)

Purchase – (32). This term is amended to include “consideration in exchange for a service.”

(Effective for sales occurring on or after March 1, 2016, and to gross receipts derived from repair, maintenance, and installation services on or after that date; HB 97, s. 32.18.(a), S.L. 15-241.)

Qualified Aircraft – (33a). This term is added and is defined as an “aircraft with a maximum take-off weight of more than 9,000 pounds but not in excess of 15,000 pounds.”

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(a), S.L. 15-259.)

Qualified Jet Engine – (33b). This term is added and is defined as an “engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.”

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(a), S.L. 15-259.)

Qualifying Datacenter – (33c). This term is added and is defined as “[a] datacenter that satisfies each of the following conditions:

- a. The datacenter meets the wage standard and health insurance requirements of G.S. 143B-437.08A.
- b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars (\$75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the owner, user, or tenant of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.”

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 3.(a), S.L. 15-259.)

Real Property Contractor – (33d). The term is defined as “[a] person that contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real property and to furnish tangible personal property to be installed or applied to real property in connection with the contract and the labor to install or apply the tangible personal property that becomes part of real property. The term includes a general contractor, a subcontractor, or a builder for purposes of G.S. 105-164.4H.”

Effective March 1, 2016, the definition is amended and provides that the “term does not include a person engaged in retail trade [as defined in G.S. 105-164.3(34a)].”

(The definition is effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after that date; HB 1050, s. 7.1.(a), S.L. 14-3. This definition is re-codified from (33a) to (33d) effective January 1, 2016; HB 117, s. 3.(a), S.L. 15-259. The amendment is effective for sales on or after March 1, 2016; HB 97, s. 32.18.(a), S.L. 15-241.)

Related Member – (33e). This term was previously codified as G.S. 105-164.3(33b).

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 3.(a), S.L. 15-259.)

Remote Sale – (33f). This term was previously codified as G.S. 105-164.3(33c).

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 3.(a), S.L. 15-259.)

Repair, Maintenance, and Installation Services – (33g). This term is added and is defined as including any of the following activities:

- a. To keep or attempt to keep tangible personal property or a motor vehicle in working order to avoid breakdown and prevent repairs.
- b. To calibrate, restore, or attempt to calibrate or restore tangible personal property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore tangible personal property or a motor vehicle to proper working order or good condition.
- d. To install or apply tangible personal property except tangible personal property installed or applied by a real property contractor pursuant to a real property contract.

(Effective March 1, 2016, and applies to sales occurring on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date; HB 97, s. 32.18.(a), S.L. 15-241.)

Retail Trade – (34a). This term is added and is defined as a “trade in which the majority of revenue is from retailing tangible personal property, digital property, or services to consumers. The term includes activities of a person properly classified in NAICS sector 44-45, buying goods for resale, and rendering services incidental to the sale of merchandise. The term typically includes maintaining an inventory and may include the provision of repair, maintenance, and installation services. Not all activities provided in this subdivision are required for a trade to be considered retail trade.”

(Effective March 1, 2016, and applies to sales occurring on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date; HB 97, s. 32.18.(a), S.L. 15-241.)

Retailer – (35). The definition for this term is amended and provides a “retailer” is “[a]ny of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or

persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.

- b. A person engaged in business of delivering, erecting, installing, or applying tangible personal property for use in this State, regardless of whether the property is permanently affixed to real property or other tangible personal property.
- c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
- d. A person, other than a facilitator, required to collect the tax levied under G.S. 105-164.4(a)."

(Effective April 9, 2015; HB 41, s. 2.10., S.L. 15-6.)

G.S. 105-164.3(35)b is amended and provides the term "retailer" includes: "[d]elivering, erecting, installing, or applying tangible personal property for use in this State that does not become part of real property pursuant to the [sales and use] tax imposed under G.S. 105-164.4(a)(13)."

(Effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after that date; HB 1050, s. 7.1.(a), S.L. 14-3.)

G.S. 105-164.3(35)b is further amended and provides a person is a "retailer" if the person is "engaged in business of delivering, erecting, installing, or applying tangible personal property for use in this State that does not become part of real property pursuant to the [sales and use] tax imposed under G.S. 105-164.4(a)(13) unless the person is one or more of the following:

1. A person that solely operates as a real property contractor.
2. A person whose only business activity is providing repair, maintenance, and installation services where the person's activities do not otherwise meet the definition of a retail trade."

(Effective March 1, 2016, and applies to sales occurring on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date; HB 97, s. 32.18.(a), S.L. 15-241.)

Retailer-contractor – (35a). This term was added and is defined as "[a] person that acts as a retailer when it sells tangible personal property at retail and as a real property contractor when it performs real property contracts." Due to the addition of the defined term "retail trade" in G.S. 105-164.3(34a), a person that meets the definition of "retail trade" as of March 1, 2016, is a "retailer" and cannot be a retailer-contractor for sales on or after that date and contracts entered into on or after that date.

(Effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after that date; HB 1050, s. 7.1.(a), S.L. 14-3.)

Service Contract – (38b). The definition of this term is amended to include “[a] contract where the obligor under the contract agrees to maintain or repair tangible personal property, *regardless of whether the property becomes a part of or is affixed to real property* [emphasis added].”

(Effective March 1, 2016, and applies to sales occurring on or after that date; HB 97, s. 32.18.(a), S.L. 15-241; HB 259, s. 10.1(g), S.L. 15-268.)

SALES AND USE TAX IMPOSITIONS

G.S. 105-164.4(a)(1a) Sales Tax Imposed at the General State Rate on Certain Items: This subdivision is rewritten to provide that such items are not subject to the taxes imposed under Subchapter VIII, Local Government Sales and Use Tax. The subdivision as rewritten provides the “general [State] rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser:

- a. A manufactured home.
- b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.
- c. An aircraft. The maximum tax is two thousand five hundred dollars (\$2,500) per article.
- d. A qualified jet engine.”

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(b), S.L. 15-259.)

G.S. 105-164.4(a)(1b) Sales Tax Imposed on Boats and Aircraft: This subdivision was amended to remove the imposition of tax on “aircraft” from this specific subdivision. There were no changes to the imposition of tax on the sales price of a boat sold at retail. See G.S. 105-164.4(a)(1a)c. for the imposition of sales tax on the sales price of an aircraft sold at retail.

(Effective October 1, 2015; HB 117, s. 4.2.(b), S.L. 15-259.)

G.S. 105-164.4(a)(7) Sales Tax Imposed on Spirituous Liquor: This subdivision is amended and adds “antique spirituous liquor” to the imposition. Additionally, the sales price of spirituous liquor sold at retail by a distillery permit holder (“distillery”) is subject to the tax imposed by this subdivision. Effective September 24, 2015, a distillery is permitted to sell spirituous liquor distilled on the premises to visitors of the distillery with certain restrictions for consumption off the premises. Spirituous liquor sold by a

distillery shall be sold at the price set by the ABC Commission for the code item pursuant to G.S. 18B-804(b).

(Effective no later than September 1, 2015 upon adoption of rules by the ABC Commission pursuant to S.L. 2015-98, s. 1.(i); HB 909, s.1.(h), S.L. 15-98.)

G.S. 105-164.4(a)(8) Sales Tax Imposed on Modular Homes: This subdivision is repealed. See G.S. 105-164.4(a)(1a)b. for the imposition of sales tax on the sales price of a modular home sold at retail.

(Effective October 1, 2015; HB 117, s. 4.2.(b), S.L. 15-259.)

G.S. 105-164.4(a)(13) Sales Tax Imposed on Tangible Personal Property Sold to a Real Property Contractor: This is a new subdivision and provides “[t]he general [State and applicable local and transit] rate[s] of [sales and use] tax appl[y] to the sales price of tangible personal property sold to a real property contractor for use by the real property contractor in erecting structures, building on, or otherwise improving, altering, or repairing real property. These sales are taxed in accordance with G.S. 105-164.4H.”

(Effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after that date; HB 1050, s. 7.1.(b), S.L. 14-3.)

G.S. 105-164.4(a)(14) Sales Tax Imposed on Piped Natural Gas Sold by Gas Cities: This subdivision is repealed effective July 1, 2015. For the period July 1, 2014 through June 30, 2015, the subdivision provides that “[n]otwithstanding subdivision (9) of this subsection, the rate of three and one-half percent (3.5%) applies to the gross receipts derived from sales of piped natural gas (i) received by a gas city for consumption by that city and (ii) delivered by a gas city to a sales customer or transportation customer of the gas city. For purposes of this subdivision, the following definitions apply:

- a. Gas city. – A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.
- b. Sales customer. – An end user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.
- c. Transportation customer. – An end user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.”

(Effective July 1, 2014, and expires July 1, 2015, and applies to the gross receipts of piped natural gas billed on or after July 1, 2014, and before July 1, 2015; SB 790, s. 1.(a), S.L. 14-39.)

G.S. 105-164.4(a)(14a) Sales Tax Imposed on Electricity Sold by Cape Hatteras Electric Membership Corporation: This subdivision is repealed effective July 1, 2015. For the period July 1, 2014 through June 30, 2015, the subdivision provides that “[n]otwithstanding subdivision (9) of this subsection, the rate of three and one-half

percent (3.5%) applies to the gross receipts derived from sales of electricity by Cape Hatteras Electric Membership Corporation."

(Effective July 1, 2014, and expires July 1, 2015, and applies to the gross receipts of electricity billed on or after July 1, 2014, and before July 1, 2015; SB 790, s. 1.(a), S.L. 14-39.)

G.S. 105-164.4(a)(15) Sales Tax Imposed on Aviation Gasoline and Jet Fuel: This is a new subdivision and provides "[t]he combined general rate [of sales and use tax] applies to the gross receipts derived from the sale of aviation gasoline and jet fuel."

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 4.1.(b), S.L. 15-259.)

G.S. 105-164.4(a)(16) Sales Tax Imposed on Repair, Maintenance, and Installation Services: This is a new subdivision and provides "[t]he general [State and applicable local and transit] rate[s] of [sales and use] tax appl[y] to the sales price of or gross receipts derived from repair, maintenance, and installation services."

(Effective March 1, 2016, and applies to sales occurring on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date; HB 97, s. 32.18.(b), S.L. 15-241.)

G.S. 105-164.G(f) Admission Charge to an Entertainment Activity: A technical change in HB 41, s. 2.11., S.L. 15-6, effective April 9, 2015, changes G.S. 105-164.4G(f) to state, in part, "[t]he sale at retail and the use, storage, or consumption in this State of the following gross receipts derived from an admission charge to an entertainment activity..."

(Effective April 9, 2015; HB 41, s. 2.11., S.L. 15-6.)

G.S. 105-164.4H Application of Sales and Use Tax to Real Property Contractors: This is a new section and provides the application of sales and use tax to real property contracts. This new section expressly provides:

(a) Applicability. – A real property contractor is the consumer of the tangible personal property that the real property contractor installs or applies for others and that becomes part of real property. A retailer engaged in business in the State shall collect [sales and use] tax on the sales price of the tangible personal property sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property for storage, use, or consumption in this State and the [sales and use] tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

(b) Retailer-Contractor. – This section applies to a retailer-contractor when the retailer-contractor acts as a real property contractor. A retailer-contractor that

purchases tangible personal property to be installed or affixed to real property may purchase items exempt from [sales and use] tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory items from the seller for resale. When the tangible personal property is withdrawn from inventory and installed or affixed to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the tangible personal property. Tangible personal property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the [sales and use] tax imposed by this Article.

If a retailer-contractor subcontracts any part of the real property contract, [sales and use] tax is payable by the subcontractor on the subcontractor's purchase of the tangible personal property that is installed or affixed to real property in fulfilling the contract. The retailer-contractor, the subcontractor, and the owner of the real property are jointly and severally liable for the [sales and use] tax. The liability of a retailer-contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the [sales and use] tax has been paid.

(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for [sales and use] tax. Any amount for [sales and use] tax separately stated on an invoice or other documentation given to a consumer by a real property contractor is an erroneous collection and must be remitted to the Secretary, and the provisions of G.S. 105-164.11(a)(2) do not apply.

A seller who collected and remitted sales or use tax in accordance with an interpretation of the law by the Secretary in the form of a rule, bulletin, or directive published before the effective date of this act is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the rule, bulletin, or directive.

The application of sales and use tax may be changed for some persons who traditionally performed real property contracts effective March 1, 2016 for contracts entered into on or after March 1, 2016 due to the change to the definition of “real property contractor.”

(Effective January 1, 2015, and applies to withdrawals of items from inventory for contracts entered into on or after that date, sales on or after that date, and contracts entered into on or after that date; HB 1050, s. 7.1.(c), 7.2.(b), 7.3., S.L. 14-3; HB 41, s. 2.1.(b), S.L. 15-6. This act shall not be construed to affect the interpretation of any statute that is the subject of a State tax audit for taxable years beginning before January 1, 2015, or litigation that is a direct result of such audit; HB 1050, s. 7.1.(c), 7.2.(a), 7.2.(b), S.L. 14-3; HB 41, s. 2.1.(a) & 2.1.(b), S.L. 15-6.)

G.S. 105-164.6 Complimentary Use Tax: An excise tax at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate

and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

- (1) Tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.
- (2) Tangible personal property or digital property leased or rented inside or outside this State for storage, use, or consumption in this State.
- (3) Services sourced to this State.

The application of use is expanded simultaneously with the changes to the imposition of sales tax imposed pursuant to G.S. 105-164.4. See the effective dates noted under the imposition of sales tax for the various products for more detail.

MISCELLANEOUS ITEMS

S.L. 14-3, s. 8.1.(c) Rental of a Private Residence, Cottage, or Similar

Accommodation: Prior to HB 41 becoming law, S.L. 14-3, s. 8.1.(c) provided: “A retailer is not liable for an overcollection or undercollection of sales tax or occupancy tax if the retailer has made a good-faith effort to comply with the law and collect the proper amount of tax and has, due to the change under [section 8.1.], overcollected or undercollected the amount of sales tax or occupancy tax that is due. This subsection applies only to the period beginning June 14, 2012, and ending July 1, 2014.”

Session Law 15-6 and section 2.2.(a) enacted a retroactive change to S.L. 14-3, s. 8.1.(c) effective June 1, 2014 and provides: “With respect to the change in this section regarding the rental of a private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year and that is listed with a real estate broker or agent, the following provisions apply:

- (1) A retailer is liable for an overcollection of sales tax or occupancy tax for the rental of such an accommodation that is occupied or available to be occupied for nights beginning June 14, 2012, and ending June 30, 2014, and must remit the tax collected.
- (2) A retailer is not liable for an undercollection of sales tax or occupancy tax for the rental of such an accommodation that is occupied or available to be occupied for nights beginning June 1, 2014, and ending June 30, 2014, if the retailer made a good-faith effort to comply with the law and collect the proper amount of tax.”

(Effective June 1, 2014, and applies to gross receipts derived from the rental of an accommodation that a person occupies or has the right to occupy on or after that date; HB 1050, s. 8.1.(c), S.L. 14-3; HB 41, s. 2.2.(a), S.L. 15-6.)

G.S. 105-164.4G(g) Sourcing an Admission Charge to an Entertainment Activity: A technical correction to this subdivision changes the term “Admission” to “An admission charge.”

(Effective April 9, 2015; HB 41, s. 2.11., S.L. 15-6.)

G.S. 105-164.16A. Reporting Option for Prepaid Meal Plans: This section as amended adds clarifying language for the reporting option between the retailer and the food service contractor and requires the accrual basis of accounting for reporting gross receipts derived from a prepaid meal plan. The statute as amended provides: “This section provides a retailer that offers a prepaid meal plan subject to the tax imposed by G.S. 105-164.4 with an option concerning the method by which the sales tax will be remitted to the Secretary and a return filed under G.S. 105-164.16. When the retailer enters into an agreement with a food service contractor by which the food service contractor agrees to provide food or prepared food under a prepaid meal plan, and the food service contractor with whom the retailer contracts is also a retailer under this Article, the retailer may include in the agreement that the food service contractor is liable for reporting and remitting the sales tax due on the gross receipts derived from the prepaid meal plan on behalf of the retailer. The agreement must provide that the tax applies to the allocated sales price of the prepaid meal plan paid by or on behalf of the person entitled to the food or prepaid food under the plan and not the amount charged by the food service contractor to the retailer under the agreement for the food and prepared food for the person.

A retailer who elects this option must report to the food service contractor with whom it has an agreement the gross receipts a person pays to the retailer for a prepaid meal plan. The retailer must report the gross receipts on an accrual basis of accounting, as required under G.S. 105-164.20. The retailer must send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan. Tax payments received by a food service contractor from a retailer are held in trust by the food service contractor for remittance to the Secretary. A food service contractor that receives a tax payment from a retailer must remit the amount received to the Secretary. A food service contractor is not liable for tax due but not received from a retailer. A retailer that does not send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan is liable for the amount of tax the retailer fails to send to the food service contractor.”

(Effective April 9, 2015; HB 41, s. 2.14.(a), S.L. 15-6.)

G.S. 105-164.27A Direct Pay Permit for Qualified Jet Engine: New subsection G.S. 105-164.27A(a2) provides “[a] person who purchases a qualified jet engine may apply to the Secretary for a direct pay permit for the purchase of a qualified jet engine. A direct pay permit issued for a qualified jet engine does not apply to any purchase other than the purchase of a qualified jet engine. The maximum use tax on a qualified jet engine is two thousand five hundred dollars (\$2,500). A person who purchases a

qualified jet engine under a direct pay permit must file a return and pay the tax due monthly to the Secretary."

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(e), S.L. 15-259.)

EXEMPTIONS AND EXCLUSIONS

G.S. 105-164.13 – Exemptions and Exclusions: The 2014 and 2015 General Assembly repealed, added, and enacted clarifying changes to the exemptions for sales and use tax. The changes and their effective dates are as follows:

Sales to a small power production facility . . . – (8a). This subdivision is amended to provide that it applies to piped natural gas used by the facility to generate electricity.

(Effective April 9, 2015; HB 41, s. 2.12., S.L. 15-6.)

Sales of the following to commercial laundries . . . – (10). This subdivision is amended to provide that it applies to piped natural gas used in the direct performance of the laundering or the pressing and cleaning service.

(Effective April 9, 2015; HB 41, s. 2.12., S.L. 15-6.)

Sales of aviation gasoline and jet fuel . . . – (11b). This subdivision is added and provides an exemption for “[s]ales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term ‘commercial aircraft’ has the same meaning as defined in subdivision (45a) of this subsection. This subdivision expires January 1, 2020.”

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 4.1.(c), S.L. 15-259.)

Parts and accessories . . . – (45d). This subdivision is added and provides an exemption for “[p]arts and accessories for use in the repair or maintenance of a qualified aircraft or a qualified jet engine [as defined in G.S. 105-164.3].”

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(d), S.L. 15-259.)

Installation charges . . . – (49). This exemption is repealed. Effective March 1, 2016, installation charges when the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of sale are part of the sales price as defined in G.S. 105-164.3 and subject to the applicable rate of sales and use tax.

(Effective March 1, 2016, and applies to sales occurring on or after that date; HB 97, s. 32.18.(d), S.L. 15-241.)

Sales of electricity for use at a qualifying datacenter . . . – (55a). This subdivision is added and provides an exemption for “[s]ales of electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter. As used in this subdivision, "datacenter support equipment" is property that is capitalized for tax purposes under the Code and is used for one of the following purposes:

- a. The provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
- b. The generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.
- c. HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
- d. Hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
- e. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(33c) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(33c), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. 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."

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 3.(b), S.L. 15-259.)

Fuel and electricity sold to a manufacturer . . . – (57). This subdivision is amended to clarify that piped natural gas when sold to a manufacturer for use in connection with the operation of a manufacturing facility is exempt from sales and use tax.

(Effective April 9, 2015; HB 41, s. 2.12., S.L. 15-6.)

Repair, maintenance, and installation services . . . – (61a). This subdivision is added and provides an exemption for “[r]epair, maintenance, and installation services provided for an item, other than a motor vehicle, for which a service contract on the item is exempt from tax under G.S. 105-164.4I. Repair, maintenance, and installation services provided for a motor vehicle are subject to tax, except as provided under subdivision (62a) of this subsection.”

(Effective March 1, 2016, and applies to sales occurring on or after that date, to gross receipts derived from repair, maintenance, and installation services provided on or after that date, and to service contracts purchased on or after that date; HB 97, s. 32.18.(e), S.L. 15-241; HB 117, s. 5.(c), S.L. 15-259.)

Repair, maintenance, and installation services purchased for resale. – (61b). This subdivision is added and provides an exemption for such services purchased for resale.

(Effective March 1, 2016, and applies to sales occurring on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date; HB 97, s. 32.18.(e), S.L. 15-241.)

An item or repair, maintenance, and installation services used to maintain or repair . . . – (62). This subdivision is amended effective October 1, 2014 to clarify that an item taxable under Article 5 of Chapter 105 of the N.C. General Statutes and used to maintain or repair tangible personal property or a motor vehicle pursuant to a service contract is exempt provided the purchaser of the service contract is not charged for the item.

This subdivision is further amended effective March 1, 2016 and provides an exemption for “repair, maintenance, or installation services used to maintain or repair tangible personal property or a motor vehicle pursuant to a service contract taxable under [Article 5 of Chapter 105 of the N.C. General Statutes] if the purchaser of the contract is not charged for the item. For purposes of this exemption, the term ‘item’ does not include a tool, equipment, supply, or similar tangible personal property used to complete the maintenance or repair and that is not deemed to be a component or repair part of the tangible personal property or motor vehicle for which a service contract is sold to a purchaser.”

(Amendments are effective October 1, 2014 and March 1, 2016, respectively; HB 41, s. 2.23.(a), S.L. 15-6; HB 97, s. 32.18.(e), S.L. 15-241.)

This subdivision is amended a third time during the 2015 General Assembly session and states, “[a]n item or repair, maintenance, and installation services used to maintain or repair tangible personal property pursuant to a **service contract taxable under this Article** [emphasis added] if the purchaser of the contract is not charged for the item or services. This exemption does not apply to an item or repair, maintenance, and installation services provided for a motor vehicle pursuant to a service contract exempt from tax under this Article unless the purchaser of the contract is not charged for the item or services. For purposes of this exemption, the term ‘item’ does not include a tool,

equipment, supply, or similar tangible personal property used to complete the maintenance or repair and that is not deemed to be a component or repair part of the tangible personal property for which a service contract is sold to a purchaser."

(Effective March 1, 2016, and applies to service contracts purchased on or after that date; HB 117, s. 5.(c), S.L. 15-259.)

A replacement item, a repair part, or repair, maintenance, and installation services . . . – (62a). This subdivision is added and provides an exemption for a "replacement item, a repair part, or repair, maintenance, and installation services to maintain or repair tangible personal property or a motor vehicle pursuant to a manufacturer's warranty or a dealer's warranty. For purposes of this subdivision, the following definitions apply:

- a. Dealer's warranty. – An explicit warranty the seller of an item extends to the purchaser of the item as part of the purchase price of the item.
- b. Manufacturer's warranty. – An explicit warranty the manufacturer of an item extends to the purchaser of the item as part of the purchase price of the item."

This subdivision codifies the historical treatment of a dealer's and manufacturer's warranty for sales and use tax purposes.

(Effective March 1, 2016, and applies to service contracts purchased on or after that date; HB 117, s. 5.(b), S.L. 15-259.)

The sale, lease, or rental of an engine to a professional motorsports racing team . . . – (65). This subdivision is added and provides an exemption for "[t]he sale, lease, or rental of an engine to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. For purposes of this subdivision, the term 'sale' includes gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a 'service contract' as defined in G.S. 105-164.3 but may meet the definition of the term 'lease or rental' as defined in G.S. 105-164.3. This subdivision expires January 1, 2020."

(Effective September 30, 2015; HB 117, s. 6.(b), S.L. 15-259; HB 730, s. 5.(a), S.L. 15-261.)

An engine or a part to build or rebuild an engine . . . – (65a). This subdivision is added and provides an exemption for "[a]n engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. This subdivision expires January 1, 2020."

(Effective September 30, 2015; HB 730, s. 5.(b), S.L. 15-261.)

G.S. 105-164.13B(a)(4) – State Exemption for an Artisan Bakery: This subdivision was amended to update an incorrect statute reference. The subdivision as amended references section 267(b) or 707(b) of the IRS Code to correct the reference for a “related person.”

(Effective April 9, 2015; HB 41, s. 2.21., S.L. 15-6.)

G.S. 105-164.4G(f)(4) and G.S. 105-164.4G(f)(5) – Admission Charge to an Entertainment Activity Exemptions: Subsections (4) and (5) were added to the exemptions and provide the following gross receipts derived from an admission charge to an entertainment activity are specifically exempt from the sales and use tax imposed by Article 5 of Chapter 105 of the N.C. General Statutes:

- (4) An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term ‘school’ is an entity regulated under Chapter 115C of the General Statutes.
- (5) An event sponsored solely by a nonprofit entity that is exempt from [income] tax under Article 4 of this Chapter if all of the following conditions are met:
 - a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.
 - b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.
 - c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term ‘compensate’ means any remuneration included in a person's gross income as defined in section 61 of the Code.

(G.S. 105-164.4G(f)(4) and G.S. 105-164.4G(f)(5) are effective January 1, 2015, and apply to gross receipts derived from an admission charge sold at retail on or after that date; HB 1050, s. 5.1.(c), S.L. 14-3)

G.S. 105-164.4I(b)(1) –Service Contract Exemptions: The following subsections regarding service contract exemptions were either added or amended as noted below:

Service Contract for a Motor Vehicle (1): This subsection is amended and removes the phrase “other than a motor vehicle exempt from tax under G.S. 105-164.13(32)” from the language of the exemption; therefore, a service contract for a motor vehicle is exempt from sales and use tax. The language of the statute for the subdivision as amended is “[a]n item exempt from tax under [Article 5 of Chapter 105 of the N.C. General Statutes].”

A service contract for a motor vehicle is a service contract that covers the entire motor vehicle, except for exclusions for normal wear and tear for certain items or regular maintenance items. A service contract for a motor vehicle is often referred to as a bumper to bumper service contract. The language of the amended subdivision is as

follows: “[a]n item exempt from tax under [Article 5 of Chapter 105 of the N.C. General Statutes].”

(Effective March 1, 2016, and applies to service contracts purchased on or after that date; HB 117, s. 5.(a), S.L. 15-259.)

Service Contract Exemption – Motorsports (3): This subsection is amended and broadens the language of the exemption retroactively. The language of the amended subdivision is as follows: “[a] transmission, an engine, rear-end gears, and any other item purchased by a professional motorsports racing team or a related member of a team for which the team may receive a sales tax refund under G.S. 105-164.14A(a)(5). This subdivision expires January 1, 2020.”

(Effective retroactively to service contracts purchased on or after January 1, 2014; HB 117, s. 6.(c), S.L. 15-259.)

Service Contract Exemption – Qualified Aircraft or Qualified Jet Engine (5): This subsection is amended and adds a new exemption from sales and use tax for a service contract on a qualified aircraft or a qualified jet engine, both terms of which are defined in G.S. 105-164.3.

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(c), S.L. 15-259.)

G.S. 105-164.4(c) – Service Contract Exceptions: This subsection is amended and expands the application of sales and use tax to the sales price of or the gross receipts derived from a service contract sold at retail for one of the following:

- (1) Tangible personal property sold at retail that is or will become a part of real property no matter whether the service contract is sold at the same time as the tangible personal property covered by the service contract.
- (2) A renewal where the tangible personal property becomes a part of or affixed to real property prior to the effective date of the renewal.

(Effective March 1, 2016, and applies to sales occurring on or after that date; HB 97, s. 32.18.(c), S.L. 15-241.)

G.S. 105-164.13E – Exemption for Farmers: Multiple subdivisions in this section were either amended or added. The changes to this section are as follows:

G.S. 105-164.13E(a) – Exemption: This subdivision was amended to clarify the following: (1) the phrase “income from farming operations,” (2) when a qualifying farmer exemption certificate expires, and (3) clarify that piped natural gas is exempt when purchased by a qualifying farmer for use by the farmer in farming operations.

The subdivision as amended provides: “[a] qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand

dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. **For purposes of this section, the term ‘income from farming operations’ means sales plus any other amounts treated as gross income under the Code from farming operations** [emphasis added]. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires **when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first** [emphasis added].

The following tangible personal property, digital property, and services are exempt from sales and use tax if purchased by a qualifying farmer and for use by the farmer in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals:

- (1) Fuel, **piped natural gas** [emphasis added], and electricity that are measured by a separate meter or another separate device and used for a purpose other than preparing food, heating dwellings, and other household purposes.
...

(Effective July 1, 2014; HB 41, s. 2.13.(a), S.L. 15-6.)

G.S. 105-164.13E(b) – Conditional Exemption: This subdivision is amended to add clarifying language and provides, in part, “[a] conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period. The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.”

(Effective July 1, 2014; HB 41, s. 2.13.(a), S.L. 15-6.)

G.S. 105-164.13E(c) – Contract with a Farmer: This subdivision is added and allows a contractor to make certain purchases without payment of sales and use tax to fulfill a contract with a qualifying or conditional farmer, provided the items purchased are ultimately for use by the qualifying or conditional farmer. The subsection provides: “[a] qualifying item listed in subdivisions (5), (8), and (9) of subsection (a) of [G.S. 105-164.13E] purchased to fulfill a contract with a person who holds a qualifying farmer

exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A contractor that purchases one of the items allowed an exemption under [G.S. 105-164.13E] must provide an exemption certificate to the retailer that includes the name of the agricultural exemption certificate holder and the agricultural exemption certificate number issued to that holder.”

Additionally, the legislation provides that a contractor who paid sales and use tax on a retail purchase of a qualifying item listed in G.S. 105-164.13E(a)(5), (8) and (9) on or after July 1, 2014 to fulfill a contract with a qualifying or conditional farmer may request a refund from the retailer, and the retailer may, upon issuance of the refund or credit, request a refund for the overpayment of tax under G.S. 105-164.11(a)(1).

(Effective July 1, 2014; HB 41, s. 2.13.(a), s. 2.13.(b), S.L. 15-6.)

G.S. 105-164.13E(d) – Definition: This new subdivision is added and defines the term “taxable year,” as the following: “[f]or purposes of this section, the term ‘taxable year’ has the same meaning as defined in G.S. 105-153.3.”

(Effective July 1, 2014; HB 41, s. 2.13.(a), S.L. 15-6.)

REFUNDS AUTHORIZED FOR CERTAIN PERSONS

G.S. 105-164.14(c) – Certain Governmental Entities: This subsection is amended and expands the governmental entities allowed an annual refund of sales and use taxes paid by it on direct purchases of tangible personal property and services. The added entities include the following:

Joint Agencies Providing Fire Protection, Emergency Services, or Police Protection – (17): This subdivision adds a joint agency created by interlocal agreement pursuant to G.S. 160A-462 that provides “fire protection, emergency services, or police protection.” The agency will qualify to file for a refund of permitted sales and use taxes beginning for the period Fiscal Year 2015-2016 for [sales and use] tax paid on qualifying purchases.

(Effective July 1, 2015 and applies to sales made on or after that date; SB 399, s. 1., S.L. 15-235.)

Soil and Water Conservation District - (25): This subdivision adds “[a] soil and water conservation district organized under Chapter 139 of the General Statutes.” The entity will qualify to file for a refund of permitted sales and use taxes beginning for the period Fiscal Year 2015-2016 for sales and use tax paid on qualifying purchases.

(Effective July 1, 2015 and applies to sales made on or after that date; HB 558, s. 1., S.L. 14-20.)

District Confinement Facility – (26): This subdivision is amended to add “[a] district confinement facility created pursuant to G.S. 153A-219, including a local act modifying G.S. 153A-219.” The entity will qualify to file for a refund of permitted sales and use taxes beginning for the period Fiscal Year 2015-2016 for sales and use tax paid on qualifying purchases.

(Effective July 1, 2015 and applies to sales made on or after that date; HB 558, s. 1., S.L. 14-20.)

G.S. 105-164.14A(a)(1) - Passenger Air Carrier: The following language is enacted into law but did not become part of the codified statute: “Notwithstanding G.S. 105-164.14A(a)(1), an interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of one million two hundred fifty thousand dollars (\$1,250,000) for the period beginning July 1, 2015, and ending December 31, 2015.”

(Effective September 30, 2015; HB 117, s. 4.1.(e), S.L. 15-259.)

G.S. 105-164.14A(a)(4) – Motorsports Team or Sanctioning Body: The sunset for repeal of this subsection is extended to January 1, 2020 from January 1, 2016.

(Effective September 30, 2015; HB 117, s. 6.(d), S.L. 15-259.)

G.S. 105-164.14A(a)(5) – Professional Motorsports Team: The sunset for repeal of the subsection is extended to January 1, 2020 from January 1, 2016.

(Effective September 30, 2015; HB 117, s. 6.(d), S.L. 15-259.)

OTHER PROVISIONS

G.S. 105-164.20. – Cash or Accrual Basis of Reporting: This section was rewritten into two new subdivisions and provides the following:

- (a) **Basis Selected.** – Except as provided in subsection (b) of this section, a retailer may report sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use the basis selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected.
- (b) **Accrual Basis.** – For purposes of reporting and remitting sales tax under [Article 5 of Chapter 105 of the N.C. General Statutes], a retailer listed in this subsection must report the gross receipts it derives from the taxable transaction listed in this subsection on an accrual basis of accounting. The following retailers must report gross receipts as provided in this subsection:
 - (1) A retailer who sells electricity, piped natural gas, or telecommunications service. A sale of electricity, piped natural gas, or telecommunications service is considered to accrue when the retailer bills its customer for the sale.

- (2) A retailer who derives gross receipts from a prepaid meal plan, notwithstanding that the retailer may report tax on the cash basis for other sales at retail and notwithstanding that the revenue has not been recognized for accounting purposes.
- (3) A retailer who sells or derives gross receipts from a service contract, as provided in G.S. 105-164.4I(d).

(Effective April 9, 2015; HB 41, s. 2.14.(b), S.L. 15-6.)

G.S. 105-164.29(a) – Requirement and Application for Certificate of Registration:

This subdivision was amended to make technical changes as to who may sign the application for registration for a limited liability company or a partnership. The subdivision as amended provides an application for registration must be signed “[b]y a manager, member, or company official, if the owner is a limited liability company” or “[b]y a manager, member, or partner, if the owner is a partnership.” The change to add “company official” is necessary to conform to other statutes relative to the laws that govern the operation of a limited liability company.

(Effective April 9, 2015; HB 41, s. 2.15., S.L. 15-6.)

Funds for Distributions from the Sales and Use Tax Collections: According to S.L. 15-6, s. 2.19.(a), “[t]he Department of Revenue may draw the funds needed to make the following distributions from the sales and use tax collections under Article 5 of Chapter 105 of the N.C. General Statutes:

- (1) The September 15, 2014, distribution of the franchise tax to cities under G.S. 105-116.1 for the calendar quarter that begins April 1, 2014.
- (2) The September 15, 2014, distribution of the excise tax to cities under G.S. 105-187.44 for the calendar quarter that begins April 1, 2014.”

(Effective July 1, 2014; HB 41, s. 2.19.(a), S.L. 15-6.)

G.S. 105-164.44D – Reimbursement for Sales Tax Exemption for Purchases by the Department of Transportation: This section is repealed effective September 18, 2015.

(Effective July 1, 2015; HB 97, s. 2.2.(b), S.L. 15-241.)

G.S. 105-164.44L(a) – Distribution of Part of Sales and Use Tax on Piped Natural Gas to Cities: This subsection is amended and provides:

- (a) Distribution. – The Secretary must distribute to cities twenty percent (20%) of the net proceeds of the [sales and use] tax collected under G.S. 105-164.4 on piped natural gas, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its excise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. A gas city will also receive an amount calculated under subsection (b1) of this section as part of its excise tax share. If the net

proceeds of the [sales and use] tax allocated under this section are not sufficient to distribute the excise tax share of each city under subsection (b) of this section and the gas city share under subsection (b1) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(Effective for quarters beginning on or after July 1, 2015; SB 790, s. 1.(c), S.L. 14-39.)

G.S. 105-164.44L(b1) – Distribution of Part of Sales and Use Tax on Piped Natural Gas to Cities: This subsection is added and states:

(b1) Gas Cities. – In addition to the excise tax share calculated under subsection (b) of this section, a gas city shall receive as part of its excise tax share a distribution calculated under this subsection. The Secretary must determine the amount the gas city would have received under repealed G.S. 105-187.44 for the last year in which taxes were imposed under repealed Article 5E of this Chapter if piped natural gas consumed by the city or delivered by the city to a customer had not been exempt from tax under repealed G.S. 105-187.41(c)(1) and G.S. 105-187.41(c)(2), excluding any amount received under subsection (b) of this section, and divide that amount by four to calculate the quarterly distribution amount for a gas city under this subsection. A gas city must report the information required by the Secretary to make the distribution under this section in the form, manner, and time required by the Secretary. The determination made by the Department with respect to a gas city's share under this subsection is final and is not subject to administrative or judicial review. For purposes of this section, the term 'gas city' is a city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(Effective for quarters beginning on or after July 1, 2015; SB 790, s. 1.(d), S.L. 14-39.)

G.S. 105-164.44M – Transfer to Division of Aviation: This new section is added and states, "[t]he net proceeds of the tax collected on aviation gasoline and jet fuel under G.S. 105-164.4 must be transferred within 75 days after the end of each fiscal year to the Highway Fund. This amount is annually appropriated from the Highway Fund to the Division of Aviation of the Department of Transportation for prioritized capital improvements to public airports and time-sensitive aviation capital improvement projects for economic development purposes."

(Effective January 1, 2016, and applies to sales made on or after that date; HB 117, s. 4.1.(d), S.L. 15-259.)

LOCAL SALES AND USE TAX

G.S. 105-467(a)(1) – Local Tax: A technical change is made to this subsection. As rewritten the subsection reads: "[a] retailer's net taxable sales and gross receipts that

are subject to the general rate of sales tax imposed by the State under G.S. 105-164.4 except the tax does not apply to the sales price of an item taxable under G.S. 105-164.4(a)(1a).”

(Effective October 1, 2015, and applies to sales made on or after that date; HB 117, s. 4.2.(f), S.L. 15-259.)

G.S. 105-469(a) – Local Tax: This subsection is amended and as rewritten reads: “[t]he Secretary shall collect and administer a tax levied by a county pursuant to this Article. As directed by G.S. 105-164.13B, taxes levied by a county on food are administered as if they were levied by the State under Article 5 of this Chapter. The references in this section to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustments made pursuant to G.S. 105-524. . . .”

(Effective July 1, 2016, and applies to local option sales taxes collected on or after that date and distributed to counties and cities on or after September 1, 2016; HB 259, s.10.1.(e2), S.L. 15-268.)

G.S. 105-522(a)(2) – City Hold Harmless for Repealed Local Taxes: This subsection is amended and as rewritten provides: “[t]he sum of the following amounts allocated for distribution to a municipality for a month. The references in this subdivision to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustment made pursuant to G.S. 105-524. The amounts are as follows...

(Effective July 1, 2016, and applies to local option sales taxes collected on or after that date and distributed to counties and cities on or after September 1, 2016; HB 259, s.10.1.(e3), S.L. 15-268.)

G.S. 105-523 – County Hold Harmless for Repealed Local Taxes Effective July 1, 2015: This section is amended and provides the following:

- (a) Intent. – It is the intent of the General Assembly that each county benefit by at least two hundred fifty thousand dollars (\$250,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.
- (b) Definitions. – The following definitions apply in this section:

...

- (2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less two hundred fifty thousand dollars (\$250,000). A county's Medicaid service costs for 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 1, 2015; SB 744, s. 37.2.(b), S.L. 14-100.)

G.S. 105-523 – County Hold Harmless for Repealed Local Taxes Effective July 1, 2016: This section is amended and provides the following:

- (a) Intent. – It is the intent of the General Assembly that each county benefit by at least one hundred twenty-five thousand dollars (\$125,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.
- (b) Definitions. – The following definitions apply in this section:

...

- (2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less one hundred twenty-five thousand dollars (\$125,000). A county's Medicaid service costs for 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 1, 2016; SB 744, s. 37.2.(c), S.L. 14-100.)

G.S. 105-523 – County Hold Harmless for Repealed Local Taxes Effective July 1, 2017: This section is amended and provides the following:

- (a) Intent. – It is the intent of the General Assembly that each county be held harmless from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.
- (b) Definitions. – The following definitions apply in this section:

...

- (2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year. A county's Medicaid service costs for 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 1, 2017; SB 744, s. 37.2.(d), S.L. 14-100.)

G.S. 105-523(b)(3) – Repealed Sales Tax Amount: This subsection is amended and as rewritten provides: “[t]he sum of the following amounts allocated for distribution to a county for a month. The references in this subdivision to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustment made pursuant to G.S. 105-524. The amounts are as follows:”

(Effective July 1, 2016, and applies to local option sales taxes collected on or after that date and distributed to counties and cities on or after September 1, 2016; HB 259, s.10.1.(e4), S.L. 15-268.)

G.S. 105-524. – Distribution of Additional Sales Tax Revenue for Economic Development, Public Education, and Community Colleges: Article 44 of Chapter 105 of the General Statutes is amended by adding G.S. 105-524 as a new section. The language of the section provides the following:

(a) Purpose. – The purpose of this section is to address sales tax leakage that results from the different revenue-raising capacity of local option sales taxes in each taxing jurisdiction. The amount to be distributed is determined under subsection (b) of this section. The amount each county may receive is determined by the county's allocation percentage under subsection (c) of this section. The General Assembly must periodically review the allocation percentages.

(b) Distribution Amount. – The Secretary must calculate a distribution amount in conformity with this section. The Secretary must deduct this amount, in equal installments, proportionately from the collections to be allocated each month for distribution under Article 39 and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter, excluding the revenue allocated under G.S. 105-469.

For the fiscal year beginning July 1, 2016, the distribution amount is eighty-four million eight hundred thousand dollars (\$84,800,000). For fiscal years beginning on or after July 1, 2017, the distribution amount is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage change of the total collection of local sales and use taxes levied under Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter for the preceding fiscal year.

(c) County Allocation. – The Secretary must, on a monthly basis, allocate to each taxing county an amount equal to one-twelfth of the distribution amount calculated under subsection (b) of this section multiplied by the appropriate allocation percentage. If, after applying the allocation percentages in this section the resulting total amounts allocated is greater or lesser than the net proceeds to be distributed, the amount allocated to each county shall be proportionately adjusted to eliminate the excess or shortage. The allocation percentages are as follows:

<u>County</u>	<u>Allocation Percentage</u>
Alamance	0.00%
Alexander	1.69%
Alleghany	0.31%
Anson	0.96%
Ashe	0.62%
Avery	0.00%
Beaufort	0.17%
Bertie	0.94%
Bladen	1.03%

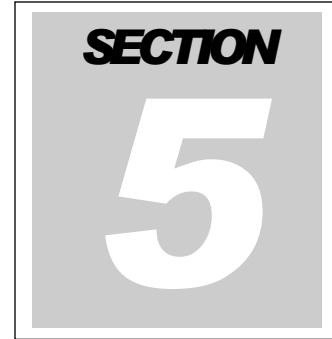
Brunswick	0.00%
Buncombe	0.00%
Burke	2.19%
Cabarrus	0.00%
Caldwell	1.72%
Camden	0.48%
Carteret	0.00%
Caswell	1.35%
Catawba	0.00%
Chatham	1.58%
Cherokee	0.24%
Chowan	0.26%
Clay	0.32%
Cleveland	1.43%
Columbus	2.63%
Craven	1.01%
Cumberland	0.06%
Currituck	0.00%
Dare	0.00%
Davidson	4.96%
Davie	1.14%
Duplin	1.97%
Durham	0.00%
Edgecombe	1.86%
Forsyth	0.00%
Franklin	2.44%
Gaston	1.96%
Gates	0.68%
Graham	0.31%
Granville	1.87%
Greene	1.20%
Guilford	0.00%
Halifax	0.76%
Harnett	5.17%
Haywood	0.05%
Henderson	0.68%
Hertford	0.47%
Hoke	2.58%
Hyde	0.03%
Iredell	0.00%
Jackson	0.00%
Johnston	3.26%
Jones	0.63%
Lee	0.37%
Lenoir	1.56%
Lincoln	1.74%

Macon	0.00%
Madison	1.03%
Martin	0.31%
McDowell	0.68%
Mecklenburg	0.00%
Mitchell	0.29%
Montgomery	1.05%
Moore	0.00%
Nash	1.16%
New Hanover	0.00%
Northampton	0.94%
Onslow	1.10%
Orange	0.33%
Pamlico	0.40%
Pasquotank	0.02%
Pender	1.69%
Perquimans	0.50%
Person	0.74%
Pitt	0.16%
Polk	0.74%
Randolph	4.27%
Richmond	0.54%
Robeson	3.00%
Rockingham	2.18%
Rowan	3.90%
Rutherford	1.63%
Sampson	2.10%
Scotland	0.83%
Stanly	1.04%
Stokes	1.99%
Surry	0.00%
Swain	0.32%
Transylvania	0.16%
Tyrrell	0.15%
Union	4.35%
Vance	0.36%
Wake	0.00%
Warren	1.01%
Washington	0.33%
Watauga	0.00%
Wayne	2.27%
Wilkes	1.55%
Wilson	0.39%
Yadkin	1.31%
Yancey	0.52%

- (d) Use of Funds. – The amount allocated to a taxing county under this section must be divided among the county and its municipalities in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. The county must use the revenue it receives under this section for economic development, public education, and community college purposes.
- (e) State Contribution. – For fiscal years beginning on or after July 1, 2016, the Secretary must annually withhold, in equal monthly installments, seventeen million six hundred thousand dollars (\$17,600,000) from sales and use tax collections under Article 5 of this Chapter. The Secretary must allocate the monthly amount withheld under this subsection to the taxing counties as follows:
- (1) Fifty percent (50%) in the distribution made under Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws, not including the revenue allocated under G.S. 105-469.
 - (2) Twenty-five percent (25%) in the distribution made under Article 40 of this Chapter, not including the calculation of the adjustment pursuant to G.S. 105-486(b).
 - (3) Twenty-five percent (25%) in the distribution made under Article 42 of this Chapter.
- (f) Taxing County. – For purposes of this section, the term "taxing county" means a county that levies the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.
- (g) Adjustments. – The adjustments made under this section to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter shall not be included in the calculations made under G.S. 105-469, 105-522, and 105-523.

(Effective July 1, 2016, and applies to local option sales taxes collected on or after that date and distributed to counties and cities on or after September 1, 2016; HB 97, s. 32.19.(b), S.L. 15-241; HB 259, s. 10.1.(e1), S.L. 15-268.)

HIGHWAY USE TAX



HIGHWAY USE TAX – ARTICLE 5A

G.S. 105-187.3(a) – Tax Base: This subsection is amended and provides, “[t]he tax imposed by this Article is applied to the sum of the retail value of a motor vehicle for which a certificate of title is issued and any fee regulated by G.S. 20-101.1. The tax does not apply to the sales price of a service contract, provided the charge is separately stated on the bill of sale or other similar document given to the purchaser at the time of the sale.”

(Effective March 1, 2016, and applies to service contracts purchased on or after that date; HB 117, s. 5.(d), S.L. 15-259.)

G.S. 105-187.3(a1) – Tax Rate: This subsection is amended to adjust the maximum highway use tax imposed for certain motor vehicles. It provides, in part, “[t]he maximum tax is two thousand dollars (\$2,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01, and for each certificate of title issued for a recreational vehicle. The tax is payable as provided in G.S. 105-187.4.”

(Effective for sales made on or after January 1, 2016, or, for purposes of G.S. 105-187.5, a lease or rental agreement entered into on or after that date; HB 97, s. 29.34A.(a), S.L. 15-241; HB 259, s. 10.1.(d), S.L. 15-268.)

G.S. 105-187.5(a) – Election: This subsection is amended and provides, “[a] retailer may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. The portion of a lease or rental billing or payment that represents any amount applicable to the sales price of a service contract as defined in G.S. 105-164.3 should not be included in the gross receipts subject to the tax imposed by this Article. The charge should be separately stated on documentation given to the purchaser at the time the lease or rental agreement goes into effect, or on the monthly billing statement or other documentation given to the purchaser. Where a retailer fails to separately state any portion of a lease or rental billing or payment that represents an amount applicable to the sale price of a service contract, the amount is deemed to be part of the gross receipts of a lease or rental of a vehicle. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the

highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle."

(Effective March 1, 2016, and applies to service contracts purchased on or after that date; HB 117, s. 5.(e), S.L. 15-259.)

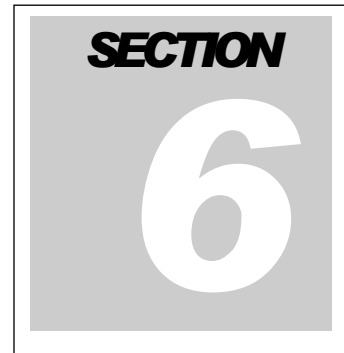
G.S. 105-187.6(c) – Out-of-State Vehicles: This subsection is amended to clarify that the maximum tax of one hundred fifty dollars (\$150.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in the name of the owner of the motor vehicle in another state for at least 90 days prior to the date of application for a certificate of title in this State.

(Effective September 18, 2015; HB 97, s. 29.34.(a), S.L. 15-241.)

This subsection is further amended to adjust the maximum highway use tax imposed on out-of-state vehicles from one hundred fifty dollars (\$150.00) to two hundred fifty dollars (\$250.00).

(Effective for sales made on or after January 1, 2016, or, for purposes of G.S. 105-187.5, a lease or rental agreement entered into on or after that date; HB 97, s. 29.34A.(b), S.L. 15-241; HB 259, s.10.1.(d), S.L. 15-268.)

CERTAIN MACHINERY AND EQUIPMENT



CERTAIN MACHINERY AND EQUIPMENT – ARTICLE 5F

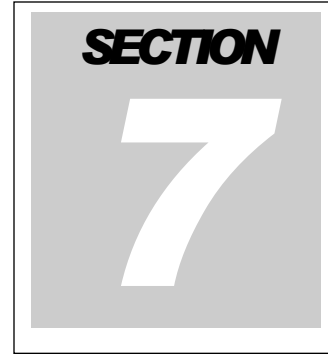
G.S. 105-187.51C – Tax Imposed on Datacenter Machinery and Equipment: This section expired for sales occurring on or after July 1, 2015.

(Effective for sales occurring on or after July 1, 2015; SB 1171, s. 7., S.L. 10-91.)

G.S. 105-187.52(c) – Exemption: This subdivision was amended and provides: “State agencies are exempted from the privilege taxes imposed by [Article 5F of Chapter 105 of the N.C. General Statutes]. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under G.S. 105-164.41(b)(4).”

(Effective October 1, 2014; HB 41, s. 2.23.(b), S.L. 15-6.)

LOCAL GOVERNMENT



SHORT TITLE, PURPOSE, AND DEFINITIONS – ARTICLE 11

G.S. 105-273(3) - Definition of Builder: (3a) "Builder" means a taxpayer engaged in the business of buying real property, making improvements to it, and then reselling it.

(Effective July 1, 2016; HB 168, s. 1, S.L. 2015-223.)

PROPERTY SUBJECT TO TAXATION – ARTICLE 12

G.S. 105-275 - Exclusion of all property located on Tribal Land: (48) Real and personal property located on lands held in trust by the United States for the Eastern Band of Cherokee Indians, regardless of ownership.

(Effective July 1, 2016; HB 912, s. 1, S.L. 2015-262.)

G.S. 105-277.02 - Certain real property held for sale classified for taxation at reduced valuation: (a) Residential Real Property. – Residential real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "residential real property" is real property that is intended to be sold and used as an individual's residence immediately or after construction of a residence, and the term excludes property that is either occupied by a tenant or used for commercial purposes such as residences shown to prospective buyers as models. Any increase in value of this classified property attributable to subdivision of, improvements other than buildings, or the construction of either a new single-family residence or a duplex on the property by the builder is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. In no event shall this exclusion extend for more than three years from the time the improved property was first subject to being listed for taxation by the builder. (b) Commercial Property. – Commercial real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "commercial real property" is real property that is intended to be sold and used for commercial purposes immediately or after improvement. Any increase in value of this classified property attributable to subdivision of or other improvements made to the property, by the builder, is excluded from taxation under this Subchapter as long as the

builder continues to hold the property for sale. The exclusion authorized by this subsection ends at the earlier of the following:

(1) Five years from the time the improved property was first subject to being listed for taxation by the builder. (2) Issuance of a building permit. (3) Sale of the property. (c) The builder must apply for any exclusion under this section annually as provided in G.S. 105-282.1. (d) In appraising property classified under this section, the assessor shall specify what portion of the value is an increase attributable to subdivision or other improvement by the builder."

(Effective July 1, 2016; HB 168, s. 2, S.L. 2015-223.)

G.S. 105-277.2 - Agricultural, horticultural, and forestland – Definitions:

(1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. For purposes of this definition, the commercial production or growing of animals includes the rearing, feeding, training, caring, and managing of horses.

(Effective July 1, 2016; SB 513, s. 12, S.L. 2015-263.)

G.S. 105-277.2 - Agricultural, horticultural, and forestland – Definitions:

A business entity that meets all of the following conditions:

1. Its principal business is farming agricultural land, horticultural land, or forestland. When determining whether an applicant under G.S. 105-277.4 has as its principal business farming agricultural land, horticultural land, or forestland, the assessor shall presume the applicant's principal business to be farming agricultural land, horticultural land, or forestland if the applicant has been approved by another county for present-use value taxation for a qualifying property located within the other county; provided, however, the presumption afforded the applicant may be rebutted by the assessor and shall have no bearing on the determination of whether the individual parcel of land meets one or more of the classes defined in G.S. 105-277.3(a). If the assessor is able to rebut the presumption, this shall not invalidate the determination that the applicant's principal business is farming agricultural land, horticultural land, or forestland in the other county.

(Effective July 1, 2016; SB 513, s. 12, S.L. 2015-263.)

G.S. 105-277.4 - Agricultural, horticultural and forestland – Application; appraisal at use value; appeal; deferred taxes: (f) The Department shall publish a present-use value program guide annually and make the guide available electronically on its Web site. When making decisions regarding the qualifications or appraisal of property under this section, the assessor shall adhere to the Department's present-use value program guide."

(Effective July 1, 2016; SB 513, s. 12, S.L. 2015-263.)

G.S. 105-278.3 - Real and personal property used for religious purposes:

(g) The following exceptions apply to the exclusive-use requirement of subsection (a) of this section:

(1) If part, but not all, of a property meets the requirements of subsection (a) of this section, the valuation of the part so used is exempt from taxation.

(2) Any parking lot wholly owned by an agency listed in subsection (c) of this section may be used for parking without removing the tax exemption granted in this section if the total charge for parking uses does not exceed that portion of the actual maintenance expenditures for the parking lot reasonably estimated to have been made on account of parking uses. This subsection shall apply beginning with the taxable year that commences on January 1, 1978.

(3) A building and the land occupied by the building is exempt from taxation if it is under construction and intended to be wholly and exclusively used by its owner for religious purposes upon completion. For purposes of this subdivision, a building is under construction starting when a building permit is issued and ending at the earlier of (i) 90 days after a certificate of occupancy is issued or (ii) 180 days after the end of active construction

(Effective July 1, 2015; HB 229, s. 1, S.L. 2015-185.)

APPROVAL, PREPARATION, DISPOSITION OF RECORDS – ARTICLE 20

G.S. 105-321(g) - Minimal Refunds: The governing body of a taxing unit that collects its own taxes may, by resolution, direct the taxing unit not to mail a refund for an overpayment of tax if the refund is less than fifteen dollars (\$15.00). Upon adoption of a resolution pursuant to this subsection, the taxing unit shall keep a record of all minimal refunds by receipt number and amount and shall make a report of the amount of these refunds to the governing body at the time of the settlement and shall implement a system by which payment of the refund may be made to a taxpayer who comes into the office of the taxing unit seeking the refund. Unless the taxpayer requests the minimal refund in person at the office of the taxing unit before the end of the fiscal year in which the refund is due, the taxing unit must implement a system to apply the minimal refund as a credit against the tax liability of the taxpayer for taxes due to the taxing unit for the next succeeding year. An overpayment of tax bears interest at the rate set under G.S. 105-241.21 from the date the interest begins to accrue until a refund is paid or applied in accordance with this section. 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 resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit.

(Effective October 1, 2015; SB 159, s. 2, S.L. 2015-266.)

MOTOR VEHICLES – ARTICLE 22A

G.S. 105-330.4 - Due date, interest, and enforcement remedies: (e) Waiver. – Notwithstanding G.S. 105-380, the governing board of a county may adopt a resolution to create a uniform policy to allow the reduction or waiver of interest or penalties on delinquent motor vehicle taxes for registered classified motor vehicles for tax years prior to July 1, 2013.

(Effective August 11, 2015; SB 273, s. 1, S.L. 2015-204.)

G.S. 105-330.5 Distribution and Collection Fees: The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division must send a copy of the combined tax and registration notice for a registered classified motor vehicle to the motor vehicle owner, as defined in G.S. 20-4.01. Upon receiving written consent from the motor vehicle owner, the notice required under this subsection may be sent electronically to an e-mail address provided by the motor vehicle owner.

(Effective January 1, 2016; SB 621, s. 1, S.L. 2015-108.)

PUBLIC SERVICES COMPANIES – ARTICLE 23

G.S. 105-333-339.1 - Appraisal of property of public service companies: This section amends the sections which added mobile telecommunications companies and tower aggregator companies to the list of property which is required to be appraised by the NC Department of Revenue.

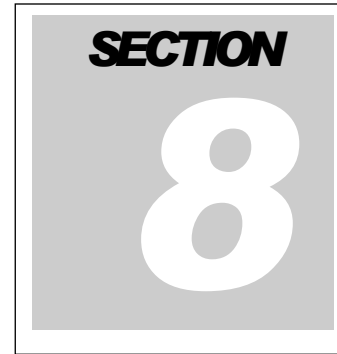
(Effective July 1, 2015; HB 41, s. 2.17, S.L. 2015-6.)

An Act to Limit Use of Contingent-Based Contracts for Audit or Assessment Purposes: Section 6 of S.L. 2012-152, as amended by Section 61.5(b) of S.L. 2012-194, reads as rewritten:

"Section 6. Sections 1, 3, and 3.1 of this act become effective October 1, 2012. The Treasurer shall not renew any contingency fee-based contracts for these services after October 1, 2012. The Treasurer shall not assign further audits on a contingency fee basis to an auditing firm under a contract that meets all the following conditions: (i) the contract would have been prohibited under this act had the contract been entered into after October 1, 2012, and (ii) the contract allows the assignment of audits on a discretionary basis by the Treasurer. Sections 2, 4, and 5 of this act become effective July 1, 2013. After July 1, 2013 cities and counties shall not renew any contingency fee-based contracts for these services. After July 1, 2013 cities and counties shall not assign further audits on a contingency fee basis to an auditing firm under a contract that meets all the following conditions: (i) the contract would have been prohibited under this act had the contract been entered into after July 1, 2013, and (ii) the contract allows the assignment of audits on a discretionary basis. The remainder of the act is effective when the act becomes law.

(Effective June 24, 2015; SB 682, s. 1, S.L. 2015-109.)

GENERAL ADMINISTRATION



GENERAL ADMINISTRATION – ARTICLE 9

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

State law defines the Internal Revenue Code as the Code enacted as of a certain date. When our State law's reference date to the Code is updated each year, that change conforms North Carolina law to federal law that has been enacted as of that date, except for any items for which specific adjustments are required by State law.

This subdivision was amended to update the reference to the Internal Revenue Code from December 31, 2013 to January 1, 2015. Notwithstanding the effective date, any amendments to the Internal Revenue Code enacted after December 31, 2013 that increase North Carolina taxable income for the 2014 taxable year become effective for the tax year 2015.

(Effective March 31, 2015; SB 20, s. 1.1, S.L. 15-2.)

G.S. 105-236(a)(10) – Penalties for Failure to File Informational Returns:

Subparagraph c of G.S. 105-236(a)(10) was amended to make the penalty for failure to an informational return with the Secretary apply to an informational return due under Article 4A. Prior to the amendment, the penalty only applied to returns required under Article 36C or 36D. The penalty is fifty dollars (\$50.00).

(Effective for taxable years beginning on or after January 1, 2016 and applies to information returns required to be filed with the Secretary in 2017 for the 2016 taxable year; HB 117, s. 7.1(b), S.L. 15-259.)

G.S. 105-237 – Waiver of penalties; installment payments: The title of this section was amended to read "Waiver; installment payments." Subsection (a) of this section was amended to authorize the Secretary to reduce or waive any interest provided for in subchapter 1 of Chapter 105 on taxes imposed prior to or during a period for which a taxpayer has declared bankruptcy under Chapter 7 or Chapter 13 of Title 11 of the United States Code.

(Effective September 30, 2015; HB 117, s. 7.2, S.L. 15-259.)

G.S. 105-237.1(a)(6) – Compromise of Liability: The 2013 General Assembly added this subdivision to permit the Secretary to compromise a taxpayer’s liability if the taxpayer is a retailer or a person under Article 5 of Chapter 105; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) and (a)(11), and the retailer or person made a good-faith effort to comply with the sales and use tax laws. As amended, this subdivision permits the Secretary to compromise a taxpayer’s liability if the taxpayer is a retailer or a person under Article 5 of Chapter 105; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) through (a)(15) and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision expires for assessments issued after July 1, 2020

(Effective March 1, 2016; HB 97, s. 32.18(f), S.L. 15-241.)

G.S. 105-241.6 – Statute of limitations for refunds: This section sets out the general statute of limitations for refunds and the exceptions to the general provisions. Uncodified language was adopted to extend to certain airline employees a limited-time exception to the general statute of limitations for requesting a refund of individual income tax. To be eligible for the limited-time exception, an airline employee, or the surviving spouse of an airline employee, must meet all of the following conditions:

- (1) Received a payment from a commercial passenger airline under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001 and before January 1, 2007 or a case filed on November 29, 2011 by American Airlines and its parent corporation, AMR (“airline payment amount”).
- (2) Received the airline payment amount in a taxable year beginning before January 1, 2012, and included the amount in federal adjusted gross income.
- (3) Transferred any portion of the airline payment amount to a traditional IRA, either by direct contribution or indirectly by contribution to and subsequent rollover from a Roth IRA, by August 13, 2012.
- (4) Filed a claim for refund of federal individual income tax paid on the airline payment amount by April 15, 2015, that was approved by the Internal Revenue Service.

An airline employee, or surviving spouse of an airline employee, that meets all four conditions had until October 15, 2015 to file a claim for refund of North Carolina individual income tax. For further information about the limited-time exception, see ***Important Notice: Limited-Time Extension of the Statute of Limitations With Respect to Refunds of Individual Income Tax Paid on Amounts Received as a Result of an Airline Carrier Bankruptcy***, published by the Department on May 6, 2015, at www.dor.state.nc.us/taxes/individual/impnotice050615airlinebankrupt.pdf.

(Effective April 9, 2015 for requests for refunds made to the Secretary of Revenue on or before October 15, 2015; HB 41, s. 2.24, S.L. 15-6.)

G. S. 105-241.6(b)(5) – Contingent Event: This subdivision was amended to make technical and clarifying changes. This subdivision was enacted in 2014 to add a new exception to the general statute of limitations for obtaining a refund of an overpayment for a contingent event.

(Effective April 9, 2015; HB 41, s. 2.16, S.L. 15-6.)

G.S. 105-241.21 – Interest: This section requires the Secretary of Revenue, on or before June 1 and December 1 of each year, to establish the interest rates applicable to overpayments and assessments of tax for the six-month periods beginning July 1 and January 1, respectively. G.S. 150B-2(8a) was rewritten to clarify that the establishment of the interest rate under G.S. 105-241.21 is not considered a rule under G.S. 150B.

(Effective March 31, 2015; SB 20, s. 2.2(c), S.L. 15-2.)

G.S. 105-243.1(e) – Use of Collection Assistance Fee: This subsection was amended to allow the Department to apply collections assistance fee proceeds to the costs of reducing the incidence of overdue tax debts. Subdivision (1) of this section was amended to allow the Department to use fee proceeds to pay auditors responsible for identifying overdue tax debts. Subdivision (2) of this section was amended to increase the amount of fee proceeds available for postage and delivery charges from \$500,000 to \$750,000. This subsection was also amended to add new subdivision (7) to allow the Department to apply fee proceeds to upgrades of the Department’s computer systems.

(Effective July 1, 2015; HB 97, s. 28.2, S.L. 15-241.)

G.S. 105-251.2 – Compliance Information Requests: This is a new statute requiring occupational licensing boards and certain alcohol vendors to provide information to the Secretary upon request. The respective subsections set out the type of information the Secretary may request. The Secretary may only request the compliance information one time per calendar year.

(Effective July 1, 2016; HB 117, s. 7.3(a), S.L. 15-259.)

G.S. 105-256 – Technical Correction; Publications: This statute was rewritten to correct a reference to “Department of Natural and Cultural Resources” from “Department of Cultural Resources.” This was required because the 2015 General Assembly amended the title of Article 2 of Chapter 143B of the General Statutes.

(Effective July 1, 2015; HB 97, s. 14.30(s), S.L. 15-241.)

G.S. 105-259(b) – Disclosure Prohibited: Subdivision (40a) is amended to add that information furnished to a data clearinghouse pursuant to the NPM Adjustment Settlement Agreement may be released to parties to the Agreement provided confidentiality protections are agreed to by the parties and overseen and enforced by the State’s applicable court for enforcement of the Master Settlement Agreement for any information constituting confidential tax information or otherwise confidential under state law and confidential manufacturer information.

(Effective July 1, 2015; HB 97, s. 6.24(h), S.L. 15-241.)

G.S. 105-259(b)(7) – Exception to Prohibition of Disclosure: This subdivision, which allows the Department to disclose tax information to the State Highway Patrol Section of the Department of Public Safety, was amended to conform with the reclassification of that section as a division.

(Effective July 1, 2015; HB 97, s. 16A.7(j), S.L. 15-241.)

G.S. 105-259(b)(34a) – Exception to Prohibition of Disclosure: This subdivision was added to permit the Department to disclose tax information to the Department of Commerce or a contractor hired by the Department of Commerce with respect to a grant awarded under the Film and Entertainment Grant Fund established under G.S. 143B-437.02A.

(Effective September 18, 2015; HB 97, s. 15.25(b), S.L. 15-241.)

G.S. 105-259(b)(45) – Exception to Prohibition of Disclosure: This subdivision, which allows the Department to disclose tax information to the State Chief Information Officer, was amended to conform to the recodification of G.S. 143B-426.38A as G.S. 143B-1344.

(Effective September 18, 2015; HB 97, s. 7A.4(h), S.L. 15-241.)

G.S. 105-259(b)(48) – Exception to Prohibition of Disclosure: This subdivision, which allows the Department to disclose tax information to the Department of Environment and Natural Resources, was amended to conform with the renaming of that department to the “Department of Environmental Quality” and the renaming of the “Secretary of Environment and Natural Resources” to the “Secretary of Environmental Quality.”

(Effective July 1, 2015; HB 97, ss. 14.30(u) and (v), respectively, S.L. 15-241.)

G.S. 105-259(b)(49) – Disclosure to North Carolina Department of Insurance: This subdivision was added to permit the Department to furnish tax information with the North Carolina Department of Insurance when the information is needed to fulfill a duty imposed on the Department.

(Effective June 19, 2015; HB 163, s. 2, S.L. 15-99.)