2016 TAX LAW CHANGES

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PREFACE

The **2016 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 2016, as well as changes made by the 2016 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.

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PERSONAL TAXES

SECTION 1

INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

G.S. 105-134.6(b)(20) – Deduction To Prevent the Double Taxation of Discharge of Certain Indebtedness: This subdivision was enacted in 2009. The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) enacted subsection 108(i) of the Code to allow a person who issued a debt instrument in connection with the conduct of a trade or business to reacquire the debt instrument and elect to defer the taxation of the income arising from the cancellation of indebtedness. The election applied to indebtedness (COD) reacquired in 2009 or 2010. If the taxpayer elected to defer the income, it was generally required to be included in gross income ratably over a five-year period beginning in 2014 unless there is an accelerating event, in which case it would be required to be included sooner.

During the 2009 legislative session, the North Carolina General Assembly elected to decouple from (not follow) this provision, thereby requiring inclusion of COD resulting from the reacquisition of a debt instrument in North Carolina taxable income in the year the debt was discharged. It did so by enacting G.S. 105-134.6(c)(13) to require an individual to make an addition for the amount of income deferred from federal taxable income under Code section 108(i)(1). Because the taxpayer would be paying State tax on the discharge of indebtedness in 2009 or 2010, this subdivision was enacted to authorize a deduction for the tax years 2014 and later for the amount of COD deferred until those years on the federal return to prevent the taxpayer from being double-taxed when the deferred income was reported for federal purposes.

This subdivision prevented the double taxation of COD income that was deferred until tax years 2014 or later. However, the Code required an acceleration of the reporting of the deferred income in the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer, the cessation of business by the taxpayer, or similar circumstances. In those cases, any item of income or deduction which was deferred had to be included in federal gross income in the taxable year in which such event occurred. Therefore, an individual who was required to include in income the previously deferred income in tax years 2009 through 2013 would be double-taxed on that income because the deduction authorized by this subdivision applied only to tax years beginning on or after January 1, 2014. To resolve the potential double taxation of COD income, this subdivision was amended so that the deduction applied to tax years

beginning on or after January 1, 2009. (For further information about overpayments in tax years 2009 through 2013 as a result of this change, see **GENERAL ADMINISTRATION, G.S. 105-241.6 - Statute of Limitations for Refunds**, later in this publication.

(Effective retroactively for taxable years beginning on or after January 1, 2009; SB 729, s. 2.4.(a), S.L. 16-5.)

G.S. 105-153.5(a)(1) – Standard Deduction: This subdivision was amended three times. The first amendment increased the standard deduction for each filing status for taxable years beginning on or after January 1, 2016. Based on the first amendment, the standard deduction for each filing status would have been:

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

The second amendment further increased the standard deduction for each filing status for tax year 2016 to the following:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	$16,500
Head of Household	$13,200
Single	$ 8,250
Married, filing separately	$ 8,250

The third amendment increased the standard deduction for each filing status for taxable years beginning on or after January 1, 2017 to the following:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	$17,500
Head of Household	$14,000
Single	$ 8,750
Married, filing separately	$ 8,750

(First amendment effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.16(a), S.L. 15-241; second amendment also effective for taxable years beginning on or after January 1, 2016; HB 1030, s. 38.1.(a), S.L. 16-94; third amendment effective for taxable years beginning on or after January 1, 2017; HB 1030, s. 38.1.(b), S.L. 16-94.)

G.S. 105-153.5(a)(2) – Itemized Deduction Amount: Sub-subdivisions a. and b. of this subdivision were amended to extend provisions enacted effective for taxable years beginning on or after January 1, 2014 that caused North Carolina to decouple from the

Internal Revenue Code with respect to itemized deductions for certain charitable contributions and mortgage interest.

Sub-subdivision a. decoupled from the Code for taxable year 2014 by allowing an individual who had attained the age of 70 ½ a North Carolina itemized deduction for a qualified charitable distribution from an individual retirement plan if the taxpayer elected to exclude the distribution from adjusted gross income. The Protecting Americans from Tax Hikes Act of 2015 ("PATH") made permanent the individual's election to exclude the distribution from adjusted gross income. This sub-subdivision was amended to make permanent the decoupling provision. See G.S. 105-153.5(c2)(3)for a corresponding addition to adjusted gross income.

Sub-subdivision b. decoupled from the Code for taxable year 2014 by not allowing an individual an itemized deduction for mortgage insurance premiums paid during the year and treated as qualified residence interest under the Code. The Protecting Americans from Tax Hikes Act of 2015 ("PATH") extended the federal deduction for mortgage insurance premiums through tax year 2016. This sub-subdivision was amended to extend the decoupling provision through tax year 2016.

In addition to the amendments to this subdivision that decouple from federal law for tax year 2015, this subdivision was amended to add new sub-subdivision d. New sub-subdivision d. allows a taxpayer to claim as part of the taxpayer's North Carolina itemized deductions the repayment in the current taxable year of amounts included in adjusted gross income in an earlier taxable year because it appeared the taxpayer had an unrestricted right to the income. This deduction is allowed to the extent the repayment is not deducted in arriving at adjusted gross income in the current taxable year. If the amount of repayment is more than $3,000, the deduction is the amount of the repayment. If the amount of the repayment is $3,000 or less, the deduction is the amount of repayment less (i) 2% of adjusted gross income minus (ii) all other federal miscellaneous itemized deductions subject to the 2% limitation. No deduction is allowed if the taxpayer calculates the federal income tax in the year of repayment under the provisions of Code section 1341(a)(5). In that case, a taxpayer will recover the tax previously paid on the repaid income under G.S. 105-266.2. This deduction restores taxpayers to the position they were in prior to taxable years beginning on or after January 1, 2014 when North Carolina followed federal law with respect to miscellaneous itemized deductions.

(Decoupling provisions in sub-subdivisions a and b effective June 1, 2016; SB 726, s. 3. S.L. 16-6; new sub-subdivision d effective retroactively for taxable years beginning on or after January 1, 2014; SB 729, s. 2.1.(a), S.L. 16-5.)

G.S. 105-153.5(b)(1) – Other Deductions: This subdivision authorizes a deduction from adjusted gross income for interest received upon the obligations of certain organizations listed in the subdivision. The subdivision was amended to add a hospital authority created under G.S. 131E-17 to the list of organizations to clarify that interest received from its obligations is exempt for North Carolina income tax purposes. This

amendment was needed because G.S. 131E-28 was repealed. Previously, G.S. 131E-28 granted tax exemption for any interest received from debt instruments of a hospital authority.

(Effective May 11, 2016; SB 729, s. 5.3.(c), S.L. 16-5.)

G.S. 105-153.5(b)(10) – Other Deductions: This new subdivision was enacted because, when the 2013 session of the General Assembly recodified certain deductions in former G.S. 105-134.6(b) in new G.S. 105-153.5(b), the deduction to prevent the double taxation of COD in G.S. 105-134.6(b)(20) was overlooked and was not recodified (see **G.S. 105-134.6(b)(20) – Deduction To Prevent the Double Taxation of Discharge of Certain Indebtedness** earlier in this section).

(Effective for taxable years beginning on or after January 1, 2014; SB 729, s. 2.1.(b), S.L. 16-5.)

G.S. 105-153.5(b)(11) – Other Deductions: This new subdivision allows a deduction in arriving at North Carolina taxable income for the amount by which a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed in arriving at federal adjusted gross income because the taxpayer claimed a federal tax credit for those expenses instead of a deduction. The deduction under this subdivision is allowed only to the extent that a similar credit is not allowed against the North Carolina income tax liability for the expenses. This new deduction is similar to the deduction previously authorized under former G.S. 105-134.6(d)(2), repealed effective for taxable years beginning on or after January 1, 2014, but was not made retroactive to that date.

(Effective for taxable years beginning on or after January 1, 2016; SB 729, s. 2.1.(c), S.L. 16-5.)

G.S. 105-153.5(c) – Additions: This subsection was amended to add **two** new subdivisions. **Subdivision (6)** requires an addition to adjusted gross income for the amount of net operating loss carried to and deducted on the federal return but not absorbed in that year and carried forward to a subsequent year. This addition prohibits a taxpayer from potentially receiving a double benefit of the net operating loss deduction. **Subdivision (7)** requires an addition to adjusted gross income for an amount contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority to the extent the amount was deducted in a prior taxable year under G.S. 105-134.6(d)(4) if this amount is withdrawn from the Parental Savings Trust Fund and not used to pay for the qualified higher education expenses of the designated beneficiary. The addition is not required if the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the beneficiary.

Both of these additions were previously required for taxable years beginning before January 1, 2014 but were overlooked and not recodified when G.S. 105-134.6 was repealed and certain additions were recodified as G.S. 105-153.5(c).

(Effective for taxable years beginning on or after January 1, 2016; SB 729, s. 2.2.(a), S.L. 16-5.)

G.S. 105-153.5(c2) – Decoupling Adjustments: Subdivisions (1), (2), and (3) of this subsection were amended to extend provisions enacted effective for taxable years beginning on or after January 1, 2014 that caused North Carolina to decouple from the Internal Revenue Code with respect to:

- the exclusion from income for the discharge of qualified principal residence indebtedness,
- the deduction in arriving at federal adjusted gross income for qualified tuition and related expenses, and
- the exclusion from federal adjusted gross income for a qualified charitable distribution from an individual retirement plan because the person had obtained age 70 ½.

Subdivision (1) was subsequently amended a second time to limit the addition in a specific situation. Subdivision (4) was enacted to decouple from a provision included in PATH for taxable years prior to 2014 under a specific situation.

Subdivision (1) decoupled from the Code for taxable year 2014 by requiring an individual 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. PATH extended the exclusion from federal gross income through tax year 2016. The first amendment to this subdivision extended the decoupling provision through tax year 2016. The second amendment to this subdivision limits the addition if the taxpayer whose qualified principal residence indebtedness is discharged is insolvent as defined in section 108(d)(3) of the Code. In that case, the addition is limited to the amount of discharge of qualified principal residence indebtedness excluded from income that exceeds the amount of discharge of indebtedness that would have been excluded because the taxpayer was insolvent.

Subdivision (2) decoupled from the Code for taxable year 2014 by requiring an individual to make an addition to adjusted gross income equal to the amount of the taxpayer's deduction in arriving at adjusted gross income for qualified tuition and related expenses. PATH extended the deduction through tax year 2016. This subdivision was amended to extend the decoupling provision through tax year 2016.

Subdivision (3) decoupled from the Code for taxable year 2014 by requiring an individual to make an addition to adjusted gross income for the amount excluded from the taxpayer's gross income for a qualified charitable distribution from an individual retirement plan because the person had obtained age 70 ½. The Protecting Americans From Tax Hikes Act of 2015 ("PATH") made permanent the individual's election to exclude the distribution from adjusted gross income. This subdivision was amended to

make permanent the decoupling provision. See G.S. 105-153.5(a)(2)a for a corresponding North Carolina itemized deduction for the amount of contribution.

New subdivision (4) was enacted to prevent certain taxpayers from receiving a double benefit. PATH included a provision to allow wrongfully incarcerated individuals to exclude from federal gross income in any year amounts paid by the federal government or a state government for civil damages, restitution, or other monetary awards related to the incarceration. North Carolina had a similar provision in tax years 1997 through 2013. The former law authorized a deduction from federal gross income for the amount paid to the taxpayer by the State as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment. The State deduction was repealed effective for taxable years beginning on or after January 1, 2014. The update to the State's reference to the Internal Revenue Code means that an individual who amends his or her federal income tax return to exclude compensation for wrongful incarceration can also amend his or her North Carolina return to exclude such income. This subdivision requires an addition on the State return for tax years prior to 2014 to the extent the amount excluded on the federal return has already been deducted on the North Carolina return. (For further information about overpayments in tax years prior to 2013 as a result of the authority to exclude income from wrongful incarceration, see **GENERAL ADMINISTRATION, G.S. 105-241.6 - Statute of Limitations for Refunds**, later in this publication.

(First change to subdivision (1), changes to subdivisions (2) and (3), and new subdivision (4) effective June 1, 2016; SB 726, s. 4, S.L. 16-6; second change to subdivision (1) effective July 11, 2016; SB 803, s. 1.2, S.L. 16-92.)

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 2015 and subsequent years to be $25,000 and $200,000, respectively. These are the same limits that applied for tax years 2013 and 2014. Stylistic changes were also made.

(Effective June 1, 2016; SB 726, s. 2.(b), S.L. 16-6.)

G.S. 105-153.7 – Individual Income Tax Imposed: This section was amended to reduce the individual income tax rate for tax years beginning on or after January 1, 2017 from 5.75% to 5.499%.

(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. 105-163.1 – Definitions: Two of the definitions in this section were amended. The definition of "Individual" in subsection (6) was amended to correct a statutory reference. The definition of "Wages" in subsection (13) was amended to eliminate obsolete language.

(Effective May 11, 2016; SB 729, s. 2.3, S.L. 16-5.)

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 (0.1%) more than the individual income tax rate established in G.S. 105-153.7. As a result, the withholding tax rate on wages for 2017 will be 5.599%.

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

The withholding tables developed by the Secretary include withholding allowances that are intended to, as nearly as possible, approximate the additions to adjusted gross income that the employee is required to make and the deductions from adjusted gross income and tax credits to which the employee is entitled. New withholding tables were developed for tax year 2016 that reflected the increased standard deduction enacted in section 32.16(a) of S.L. 15-241. Uncodified language was enacted to waive the requirement to create new withholding tables for tax year 2016 based on the further increase in the standard deduction for tax year 2016 enacted in section 38.1.(a) of S.L. 2016-94. New withholding tables will be developed for tax year 2017 to reflect the increased standard deduction for that year enacted in section 38.1.(b) of S.L. 2016-94 and the reduced individual income tax rate for tax year 2017 enacted in section 32.16(c) of S.L. 15-241.

(Effective July 14, 2016; HB 1030, s. 38.1.(c), S.L. 16-94.)

CORPORATE TAX

SECTION 2

FRANCHISE TAX – ARTICLE 3

The 2015 General Assembly made several changes to the calculation of the franchise tax. To simplify the calculation of the tax, many obsolete and antiquated deductions were eliminated. The minimum franchise tax was also increased. As originally enacted, the effective date of the changes was January 1, 2017, for taxes due on or after that date. To make it clear that the franchise tax modifications apply to the franchise tax reported on the 2016 franchise and income tax return regardless of when the tax is due, the 2016 General Assembly made a correction to the effective date. As corrected, the effective date of the franchise tax modifications is for taxable years beginning on or after January 1, 2017, and applies to the calculation of franchise tax reported on the 2016 and later corporate income tax return.

(Effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-114(b) – Definition of Total Assets: As part of the 2015 franchise tax modifications, a new subdivision (5) was added to G.S. 105-114(b) to define the term "total assets." As enacted, "total assets" is defined 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" are used to compute a corporation's "net worth" base, formally known as the corporation's "capital stock, surplus, and undivided profits" base.

(Effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(a), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-114.1(b) and (d) – Definition of Net Worth: As part of the 2015 franchise tax modifications, subdivisions (b) and (d) of G.S. 105-114.1 were amended 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 for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(e), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-120.2(b) – Franchise Tax for Holding Companies: As part of the 2015 franchise tax modifications, G.S. 105-120.2(b), the section of the franchise tax law that imposes a franchise tax or privilege tax on holding companies, was amended three times. The first amendment replaced 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). The second amendment increased the annual minimum franchise tax due on a holding company from thirty-five dollars ($35) to two hundred dollars ($200). The third amendment increased the maximum franchise liability of a holding company that calculates its franchise tax liability on its "net worth" tax base to an amount not to exceed one hundred fifty thousand dollars ($150,000), previously seventy-five thousand dollars ($75,000).

(Effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(b), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-121.1 – Franchise Tax on Mutual Burial Associations Repealed: This section, which established an annual franchise tax or privilege tax on mutual burial associations, was repealed for taxes due on or after April 1, 2017.

(Effective April 1, 2017 for taxes due on or after that date; SB 729, s. 1.1(a), S.L. 16-5.)

G.S. 105-122 – Computation of Net Worth for General Business Corporations: As part of the 2015 franchise tax modifications, subdivisions (1), (1a), (2), (2a), and (3) of G.S. 105-122(b) were amended. Prior to the amendments, a corporation generally determined its franchise tax liability based on the corporation's total amount of issued and outstanding capital stock, surplus and undivided profits" (collectively, its "capital"). As amended, a corporation's franchise tax liability will be generally determined based on a corporation's net worth.

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 for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(c) and (d), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-122(b1) – Definitions: As part of the 2015 franchise tax modifications, subsection (b1) of G.S. 105-122 was amended to add or update the following definitions used in the computation of the new net worth base:

- Affiliate. – A corporation is an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.
- Affiliated group. – The same meaning as defined in G.S. 105-114.1.
- Capital interest. – The right under an entity's governing law to receive a percentage of the entity's assets upon dissolution after payments to creditors.
- Governing law. – The law under which the noncorporate entity is organized.
- Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, a subsidiary, an affiliate, or a noncorporate entity in

which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

- Noncorporate entity. – A person that is neither a human being nor a corporation.
- Parent. – A corporation is a parent of another corporation when, directly or indirectly, it controls the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.
- Subsidiary. – A corporation is a subsidiary of another corporation when, directly or indirectly, it is subject to control by the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interest, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(Effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(d), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-122(d) – Minimum Franchise Tax Increased for General Business Corporations: As part of the 2015 franchise tax modifications, subsection (d) of G.S. 105-122 was amended to increase the minimum franchise tax imposed on a domestic and foreign corporation for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State from thirty-five dollars ($35) to two hundred dollars ($200).

(Effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(d), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-122(d) – Investment in Tangible Property: As part of the 2015 franchise tax modifications, subsection (d) of G.S. 105-122 was amended to repeal the following in the calculation of investment in tangible property for franchise tax purposes:

- A deduction from tangible property investments for any indebtedness incurred by virtue of the purchase of any real estate and any improvements.
- A deduction from tangible property investments of the cost of an air-cleaning device or sewerage or waste treatment plant.
- A deduction from tangible property investments for the cost of constructing facilities built to provide sewer service to residential and outlying areas.

(Effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(d), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-122(d1) – Natural Gas Tax Credit Repealed: As part of the 2015 franchise tax modifications, subsection (d1) of G.S. 105-122, which provided a franchise tax credit for payments made for natural gas under Article 5E, was repealed because it was obsolete and no longer needed. The tax credit should have been repealed effective July 1, 2014, when Article 5E was repealed.

(Effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(c), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

G.S. 105-125(b) – Computation of Franchise Tax for Certain Investment Companies: As part of the 2015 franchise tax modifications, subsection (b) of G.S. 105-125 was re-written 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 for taxable years beginning on or after January 1, 2017; HB 97, s. 32.15(f), S.L. 15-241. Amendment to the effective date, effective May 11, 2016; SB 729, s. 1.7(a) & (b), S.L. 16-5.)

BUSINESS AND ENERGY TAX CREDITS – ARTICLE 3B

G.S. 105-129.16D(b) – Sunset Extended for Credit for Constructing Renewable Fuel Facilities: Subsection (b) of G.S. 105-129.16D was amended to extend the sunset date for the credit for constructing renewable fuel facilities for processing renewable fuel for three years, from January 1, 2017 to January 1, 2020, but only for a taxpayer that meets BOTH of the following conditions:

1) The taxpayer signed a letter of commitment with the Department of Commerce on or before September 1, 2013, stating taxpayer's intent to construct and place into service in this State a commercial facility for processing renewable fuel.

2) The taxpayer began construction of the facility on or before December 31, 2013.

Since its enactment, the sunset date has been extended three times. Most recently, the 2013 General Assembly extended the sunset date for taxpayers that met both of the above conditions from January 1, 2014 to January 1, 2017. For all other taxpayers that did not meet the statutory requirements, the credit for constructing renewable fuel facilities expired for facilities placed in service on or after January 1, 2014.

The credit, which is equal to 25% of the cost to the taxpayer of constructing and equipping the renewable fuel production facility, may be taken against the franchise tax levied in Article 3, income taxes levied under Article 4 of Chapter 105, or the gross premiums tax levied in Article 8B of Chapter 105. The tax credit must be taken in seven equal installments beginning with the taxable year in which the facility is placed in service.

(Effective July 26, 2016; SB 770, s. 10, S.L. 16-113.)

HISTORIC REHABILITATION TAX CREDIT – ARTICLE 3L

Article 3L – Historic Preservation Tax Credits Investment Program: The 2015 General Assembly enacted Article 3L to replace the historic rehabilitation 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. Article 3L credits are very similar to the former Article 3D tax credits; however, Article 3L credits are capped and have a lower credit percentage. Article 3L established the following historic rehabilitation tax credits:

- Credit for rehabilitating income-producing historic structure
- Credit for rehabilitating non-income-producing historic structure

Article 3L tax credits became effective January 1, 2016, and apply to qualified rehabilitation expenditures and rehabilitation expenses incurred on or after that date. Article 3L is set to expire for expenses incurred on or after January 1, 2020.

G.S. 105-129.105 - Credit for Rehabilitating Income-Producing Historic Structure: Subsection (a) establishes a 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 capped at 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. 105-129.105.

G.S. 105-129.106 – 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) caps the amount of tax 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. 105-129.107 – 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. 105-129.108 – 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. 105-129.109 – 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. 105-129.110 – 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, 2017, the tax rate for C corporations is decreased from 4% to 3%. North Carolina tax revenue exceeded the rate reduction threshold of twenty billion nine hundred seventy-five million dollars ($20,975,000,000) established in G.S. 105-130.3C for the fiscal year 2015-2016 thereby triggering a reduction in the State's corporate income tax rate for taxable years beginning on or after January 1, 2017 by 1%.

(Effective for taxable years beginning on or after January, 1, 2017; HB 998, s. 2.2(b), S.L. 13-316 as amended by HB 97, s. 32.13(b), S.L. 15-241.)

G.S. 105-130.4(a)(6) – Definitions – Public Utility: This subdivision was amended to delete a reference to the Interstate Commerce Commission in the definition of "public utility." The Interstate Commerce Commission was abolished in 1995.

(Effective July 11, 2016; SB 803, s. 1.1, S.L. 16-92.)

G.S. 105-130.4(a)(7) – Definitions – Sales: Subsection (a)(7) of G.S. 105-130.4 defines the term "sales" to mean all gross receipts of the taxpayer except specific exclusions enumerated by law. This subdivision was amended to add the following additional items to the list of excluded receipts from the State's definition of "sales":

- Financial swaps and other financial derivatives
- Dividends subtracted under G.S. 105-130.5(b)(3a), (3b)
- Dividends excluded from federal tax

(Effective for taxable years beginning on or after January 1, 2016; SB 729, s. 1.6(a), S.L. 16-5.)

G.S. 105-130.4(i) – Phase-In Single Sales Factor Apportionment: The 2015 General Assembly enacted legislation to require North Carolina to phase in a single sales factor apportionment formula over a three year period, beginning in tax year 2016. Under prior law, the apportionment formula consisted of the sum of the property factor, the payroll factor, and twice the sales factor divided by four. As amended, subsection (i) of G.S. 105-130.4 is rewritten as follows:

- For taxable year 2016, the sales factor is 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.

- For taxable year 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.

- For taxable year 2018 and thereafter, the sales factor will be the only apportionment factor.

In addition, effective January 1, 2018, the following statutory provisions related to the property and payroll factor, as well as special apportionment rules that currently allow single sales factor apportionment, are repealed because they will no longer be necessary:

- 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.)

G.S. 105-130.4(s) – Air Transportation Corporation: This subsection was amended to allow a "qualified air freight forwarder" to utilize the revenue ton miles of an affiliated air carrier for purposes of apportioning its income to North Carolina.

As part of this legislation, the definition of "revenue ton mile" was amended to include ton miles by vessel and motor vehicle as well as aircraft. In addition, the following new terms were added and defined as follows:

- Air carrier – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.
- Air transportation corporation – One or more of the following:
    a) An air carrier that carries any combination of passengers or property of any kind.
    b) A qualified air freight forwarder.
- Qualified air freight forwarder – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.

(Effective for taxable years beginning on or after January 1, 2016; SB 729, s. 1.3(a), S.L. 16-5.)

G.S. 105-130.4(s1)(5) – Qualified Capital Intensive Corporation: This subdivision was amended to correct a cross reference to the statute that sets out the criteria for satisfying the wage standard. The reference to G.S. 105-129.83(c) was changed to G.S. 105-164.3(33c)a.

(Effective May 11, 2016; SB 729, s. 5.5(b), S.L. 16-5.)

G.S. 105-130.4(s1)(6) – Qualified Capital Intensive Corporation: This subdivision was amended to correct a cross reference to the statute that sets out the criteria for satisfying the health insurance requirement. The reference to G.S. 105-129.83(d) was changed to G.S. 105-164.3(33c)c.

(Effective May 11, 2016; SB 729, s. 5.5(b), S.L. 16-5.)

Market Based Sourcing Rules: The 2016 General Assembly adopted legislation that requires the Department of Revenue to adopt rules regarding the implementation and administration of market-based sourcing principles. The Department must submit the rules to the Rules Review Commission of the North Carolina Office of Administrative Hearings on or before January 20, 2017.

Pursuant to the legislation and Chapter 150B of the General Statutes, before the Department adopts permanent rules for market-based sourcing, it must take the following actions:

- Publish a notice of text of the proposed rules in the North Carolina Register
- Hold a public hearing on the proposed rules if a written request is received within 15 days after the notice of text is published
- Accept comments on the proposed rules for at least 90 days after the text is published

Importantly, this legislation did not enact market-based sourcing. If approved by the Rules Review Commission, the rules cannot be entered into the North Carolina Administrative Code unless and until the General Assembly enacts market-based sourcing and directs the Codifier of the Rules to do so. This legislation ensures that the General Assembly, and the public, will know what the rules pertaining to market-based sourcing would look like if the General Assembly decides to enact market-based sourcing legislation in the future.

(Effective July 14, 2016; HB 1030, s. 38.4(c), S.L. 16-94.)

G.S. 105-130.5(a)(25) – Addition to Federal Taxable Income for Net Interest to a Related Member: The 2015 General Assembly added this new subdivision to require a taxpayer to add to federal taxable income the amount of "net interest expense" to a related member interest expense as determined under G.S. 105-130.7B. For a definition of "net interest expense," see **G.S. 105-130.7B – Related Member Limitation on Qualified Interest Provisions.**

(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: The 2015 General Assembly amended this subsection to expand the corporate income tax base by eliminating the following antiquated, obsolete, and special 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)(1a) – Deduction from Federal Taxable Income for Interest Upon Certain Obligations: This amendment adds hospital authorities created under G.S. 131E-17 as subparagraph (c) to the list in which interest, net of related expenses, may be deducted from federal taxable income in determining State net income to the extent the interest was included in federal taxable income. This amendment was needed because G.S. 131E-28 was repealed. Previously, G.S. 131E-28 granted tax exemption for any interest received from debt instruments of a hospital authority.

(Effective May 11, 2016; SB 729, s. 5.3(b), S.L. 16-5.)

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. For more information, see **G.S. 105-130.5(c)(3) – Adjustment to Federal Taxable Income for Attribution of Expenses**.

(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)(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)(25) – Deduction to Prevent the Double Taxation of Discharge of Cancellation of Indebtedness: This subdivision was enacted in 2009. The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) enacted subsection 108(i) of the Code to allow a taxpayer who issued a debt instrument in connection with the conduct of a trade or business to reacquire the debt instrument and elect to defer the taxation of the income arising from the cancellation of indebtedness. The election applied to indebtedness (COD) reacquired in 2009 or 2010. If the taxpayer elected to defer the income, it was generally required to be included in gross income ratably over a five-year period beginning in 2014 unless there is an accelerating event, in which case it would be required to be included sooner.

During the 2009 legislative session, the North Carolina General Assembly elected to decouple from (not follow) this provision, thereby requiring inclusion of COD resulting from the reacquisition of a debt instrument in North Carolina taxable income in the year the debt was discharged. It did so by enacting G.S. 105-130.5(a)(21) to require a corporation to make an addition for the amount of income deferred from federal taxable income under Code section 108(i)(1). Because the taxpayer would be paying State tax on the discharge of indebtedness in 2009 or 2010, this subdivision was enacted to authorize a deduction for the tax years 2014 and later for the amount of COD deferred until those years on the federal return to prevent the taxpayer from being double-taxed when the deferred income was reported for federal purposes.

This subdivision prevented the double taxation of COD income that was deferred until tax years 2014 or later. However, the Code required an acceleration of the reporting of the deferred income in the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer, the cessation of business by the taxpayer, or similar circumstances. In those cases, any item of income or deduction which was deferred had to be included in federal gross income in the taxable year in which such event occurred. Therefore, an individual who was required to include in income the previously deferred income in tax years 2009 through 2013 would be double-taxed on that income because the deduction authorized by this subdivision applied only to tax

years beginning on or after January 1, 2014. To resolve the potential double taxation of COD income, this subdivision was amended so that the deduction applied to tax years beginning on or after January 1, 2009. (For further information about overpayments in tax years 2009 through 2013 as a result of this change, see **GENERAL ADMINISTRATION, G.S. 105-241.6 - Statute of Limitations for Refunds**, later in this publication.

(Effective retroactively for taxable years beginning on or after January 1, 2009; SB 729, s. 2.4.(a), S.L. 16-5.)

G.S. 105-130.5(b)(28) – Deduction from Federal Taxable Income for Qualified Interest Expense to a Related Member: The 2015 General Assembly added this subdivision allowing a corporation to deduct the amount of "qualified interest expense" to a related member as determined under G.S. 105-130.7B. For a definition of "qualified interest expense," see **G.S. 105-130.7B(b)(4) – Related Member Limitation on Qualified Interest –Definitions.**

(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 that applies equally to all corporate taxpayers. 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 special deduction for interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, was eliminated by the 2015 General Assembly.

(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 that 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 years 2015 and after to be $25,000 and $200,000, respectively. These are the same limits that have been in place for the taxable years 2013 and 2014.

(Effective June 1, 2016; SB 726, s. 2(a), S. L. 16-6.)

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 by the 2015 General Assembly. For more information, see **G.S. 105-130.5(c)(3) – Adjustment to Federal Taxable Income for Attribution of Expenses**.

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

G.S. 105-130.7A(a) – Royalty Income Reporting Option Purpose: This subsection, was amended to clarify that an exercise of the royalty reporting option by a taxpayer does not affect whether the taxpayer has nexus in North Carolina and does not permit the taxpayer to exclude the royalty income from the computation of the sales factor. As originally enacted, a corporation that receives royalty payments for the use of intangible property in this State is doing business in this State and must file an income and franchise tax return and pay taxes on their royalty income derived from North Carolina. All apportionable income of a corporation doing business in North Carolina is required to be apportioned to the State in accordance with the provisions of Article 4.

(Effective May 11, 2016; SB 729, s. 1.5, S.L. 16-5.)

G.S. 105-130.7B – Related Member Limitation on Qualified Interest Provisions: The 2015 General Assembly added this section to close a loophole some corporations have attempted to use to artificially reduce their North Carolina taxable income through interest expense deductions on loans from affiliates and related members by limiting the amount of related party interest deductions to a "qualified interest expense" amount. For a definition of "qualified interest expense," see subsection (b), below. 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) defines the following terms:

1) Adjusted taxable income – State net income of the taxpayer determined without regard to G.S. 105-130.7B 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. 105-130.7B(b) – Related Member Limitation on Qualified Interest -Definitions: The 2016 General Assembly amended this subsection twice. The first amendment made a technical change to the definition of "qualified interest expense" to make the definition of deductible interest expense paid between parent and subsidiary corporations consistent for in-State and out-of-state companies. The definition now clarifies that interest expense paid or accrued to a related member meets the exception to the general limitation if either North Carolina or another state imposes an income tax or gross receipts tax on the interest income of the related member interest. This technical change also clarifies that interest paid to a related member that is eliminated

in a combined or consolidated return with the related member does not qualify for the exception to the general limitation.

The second amendment further modified the definition of "qualified interest expense" and created two new definitions. As amended, the State's related corporation qualified interest expense deduction is reduced from 30% to 15% of a taxpayer's adjusted taxable income. In addition, a new exception to the general limitation was added to allow an interest deduction for a portion of a corporation's related member interest expense that represents its proportional share of amounts of interest traceable through related members and ultimately paid to an unrelated party.

As amended, the subsection reads:

4) Qualified interest expense – The amount of net interest paid or accrued to a related member in a taxable year with the amount limited to the greater of (i) fifteen percent (15%) of the taxpayer's adjusted taxable income or (ii) the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. 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.

5) Proportionate share of interest – The amount of taxpayer's net interest expense paid or accrued directly to or through a related member to an ultimate payer divided by the total net interest expense of all related members that is paid or accrued directly to or through a related member to the same ultimate payer, multiplied by the interest paid or accrued to a person who is not a related member by the ultimate payer. Any amount that is distributed, paid, or accrued directly or through a related member that is not treated as interest under this Part does not qualify.

6) Ultimate payer – A related member that receives or accrues interest from related members directly or through a related member and pays or accrues interest to a person who is not a related member.

(First amendment is effective for taxable years beginning on or after January 1, 2016; SB 729, s. 1.8(a), S.L. 16-5; second amendment is effective for taxable years beginning on or after January 1, 2016; SB 729, s. 1.8(b), S.L. 16-5.)

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 was repealed by the 2015 General Assembly.

(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, 2016, and 2017 calendar years. This charge is a percentage of gross premiums tax liability.

(Effective July 1, 2016; HB 1030, s. 23.1, S.L. 16-94.)

G.S. 105-228.5(b)(4) – Self-insurers Gross Premium Tax: This subdivision was amended to correct a statutory reference from “Article 2 of Chapter 97” to “Article 36 of Chapter 58.”

(Effective May 11, 2016; SB 729, s. 1.4, S.L. 16-5.)

EXCISE TAX

SECTION 3

TOBACCO PRODUCTS TAX – ARTICLE 2A

G.S. 105-113.13 – Secretary May Require a Bond or Irrevocable Letter of Credit: This statute is rewritten to set the bond amount for cigarette distributors at two times the average expected monthly tax liability and establishes bond limits of at least $2,000, but not more than $2,000,000.

(Effective May 11, 2016; SB 729, s. 4.1(a), S.L. 16-5)

G.S. 105-113.35(a) – Tax on Tobacco Products: This subsection was rewritten to clarify that the excise tax of 12.8% of the cost price of tobacco products does not apply to cigarettes and vapor products.

(Effective May 11, 2016; SB 729, s. 4.2, S.L. 16-5)

G.S. 105-113.38 – Bond or Irrevocable Letter of Credit: This statute is rewritten to set the bond amount for tobacco product wholesale and retail dealers at two times the average expected monthly tax liability and establishes bond limits of at least $2,000, but not more than $2,000,000.

(Effective May 11, 2016; SB 729, s. 4.1(b), S.L. 16-5)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES–ARTICLE 2C

G.S. 105-113.83(b) – Beer and Wine: This subsection was rewritten to require wine shipper permittees to submit verified reports and pay excise taxes owed once a year on or before the fifteenth (15th) day of the first month of the following calendar year. Previously, wine shipper permittees were required to submit verified reports and pay excise taxes monthly.

(Effective May 11, 2016; SB 729, s. 4.3, S.L. 16-5)

G.S. 105-113.84 – Report of Resident Brewery, Resident Winery, Nonresident Vendor, or Wine Shipper Permittee: This statute was rewritten to clarify reporting for wine shipper permittees must be filed with the Secretary once a year on or before the

fifteenth (15th) day of the first month of the following calendar year, amending the previous monthly reporting requirement.

(Effective May 11, 2016; SB 729, s. 4.12, S.L. 16-5)

SEVERENCE TAX – ARTICLE 5I

G.S. 105-187-77(a) – Purpose: This subsection is rewritten to clarify the privilege tax liability on the severance of energy minerals is imposed on the producer of the energy mineral.

(Effective May 11, 2016; SB 729, s. 4.4(b), S.L. 16-5)

G.S. 105-187.81 – Bond or Letter of Credit Required: This statute is rewritten to require producers of energy minerals to file a bond or irrevocable letter of credit after obtaining a drilling permit and establishes bond limits of at least $2,000, but not more than $2,000,000. It is further required that the Secretary conduct periodic reviews of the sufficiency of the bond to increase or decrease the bond amount to adequately protect the State from loss.

(Effective May 11, 2016; SB 729, s. 4.4(c), S.L. 16-5)

G.S. 105-187.82 – Liability of Producer for Tax: This statute is repealed.

(Effective May 11, 2016; SB 729, s. 4.4(a), S.L. 16-5)

TAX ON MOTOR CARRIERS – ARTICLE 36B

G.S. 105-449.45 – Returns of Carriers: This statute is amended by adding a new subsection clarifying the interest rate applicable to IFTA taxpayers to read:

"(e) Interest. – Interest on overpayments and underpayments of tax imposed on motor carriers under this Article is subject to the interest rate adopted in the International Fuel Tax Agreement."

(Effective May 11, 2016; SB 729, s. 4.8, S.L. 16-5)

G.S. 105-449.49 – Temporary Permits: This statute was rewritten allowing permitting services to obtain temporary permits authorizing motor carriers to operate a vehicle in the State for three days without registering the vehicle, and allowing the permitting services to sell the temporary permits to motor carriers. As the Department will no longer handle the issuance of temporary permits, subsection (b) was removed.

(Effective May 11, 2016; SB 729, s. 4.6, S.L. 16-5)

G.S. 105-449.57(a) – Authority: This subsection was rewritten to authorize the Secretary to appoint a designee to enter agreements regarding the administration of the International Fuel Tax Agreement.

(Effective May 11, 2016; SB 729, s. 4.7(a), S.L. 16-5)

G.S. 105-449.57(c) – Disclosure: This subdivision was rewritten to clarify that allowable disclosures to other members of cooperative agreements include any information relative to the administration and collection of a tax imposed on the use of motor fuel or alternative fuel by any motor carrier.

(Effective May 11, 2016; SB 729, s. 4.5(b), S.L. 16-5)

G.S. 105-449.57(e) – Restriction: This subsection was rewritten to clarify that no designee appointed by the Secretary to enter agreements regarding the administration of the International Fuel Tax Agreement may enter an agreement that would impact the amount of motor fuel taxes imposed.

(Effective May 11, 2016; SB 729, s. 4.7(b), S.L. 16-5)

GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C

G.S. 105-449.39 – Credit for Payment of Motor Fuel Tax: This statute is rewritten to remove the reference to using the variable cents per gallon rate for determining the amount of credit for tax paid motor fuel, and clarify the credit is calculated based on the tax rate in effect for the applicable time period.

(Effective January 1, 2016; SB 729, s. 4.10(a) and 4.10(d), S.L. 16-5)

G.S. 105-449.88 – Exemptions from the Excise Tax: This statute is amended by adding hospital authorities as a new exempt entity from the motor fuels excise tax. The new subsection reads as follows:

"(10) Motor fuel sold to a hospital authority created under G.S. 131E-17."

(Effective May 11, 2016; SB 729, s. 5.3(d), S.L. 16-5)

G.S. 105-449.106 – Quarterly Refunds for Nonprofit Organizations, Taxicabs, and Special Mobile Equipment: This statute is rewritten to remove the reference to using the variable cents per gallon rate for determining refund amounts on tax paid motor fuel, and clarify the refund is calculated based on the tax rate in effect for the applicable time period.

(Effective January 1, 2016; SB 729, s. 4.10(b) and 4.10(d), S.L. 16-5)

G.S. 105-449.107 – Annual Refunds for Off-highway Use and Use by Certain Vehicles with Power Attachments: This statute is rewritten to remove the reference to using the variable cents per gallon rate for determining refund amounts on tax paid motor fuel, and clarify the refund is calculated based on the tax rate in effect for the applicable time period.

(Effective January 1, 2016; SB 729, s. 4.10(c) and 4.10(d), S.L. 16-5)

G.S. 105-449.107(c) – Sales Tax Amount: This statute is rewritten to restore a method of calculating the cost per gallon of motor fuel used when a taxpayer receives a refund of the motor fuel excise tax, less the sales tax on the motor fuel. The method of calculating the cost per gallon was previously derived by using an "average wholesale price" and was changed to use the consumer price index for retail sales of motor fuels to conform to the methodology for calculating the motor fuels tax rate.

(Effective January 1, 2016; SB 729, s. 4.9(a) and 4.9(b), S.L. 16-5)

G.S. 105-449.125 – Distribution of Tax Revenue Among Various Funds and Accounts: Distribution to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund was repealed in Session Law 2015-241. This statute is rewritten to clarify the legislative intent that distribution of any non-allocated portion of a fund shall be allocated to the Highway Fund and Highway Trust Fund. This statute also clarifies the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund is repealed effective July 1, 2016.

(Effective July 1, 2016; SB 729, s. 4.11(a) and 4.11(c); S.L. 16-5)

G.S. 105-449.125 – Distribution of Tax Revenue Among Various Funds and Accounts: The amount of funds distributed to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Water and Air Quality Account was amended from fractional amounts to percentages with the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund increasing from 19/32 of one-half cent to 62.5% of one-half cent and the Water and Air Quality Account decreasing from 5/16 of one-half cent to 28.1% of one-half cent.

(Effective July 1, 2016; HB 1030, s. 14.3; S.L. 16-94)

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: The name of the Fund is amended to remove reference to "Lake Maintenance" and replace with "Aquatic Weed" to rename the Fund as the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

(Effective July 1, 2016; HB 1030, s. 14.12(d); S.L. 16-94)

North Carolina / South Carolina Boundary Confirmation: For excise tax purposes, an establishment to which permits may be issued under G.S. § 18B-1006(n1), as enacted by this act, is considered a special class of property under the North Carolina Constitution, and the motor fuel sold by the establishment is to be taxed at a rate of 16 cents per gallon. The Revenue Laws Study Committee will compare the motor fuel excise tax rate imposed by this section with the rate levied by the State of South Carolina each year and recommend a change in rate so that the tax rate imposed is not greater than the amount in effect in South Carolina.

An establishment designated as a special class of property may obtain monthly refunds on the difference between the motor fuel excise tax imposed under G.S. § 105-449.80 and the motor fuel excise tax imposed by this section.

The difference in taxes, together with any interest, penalties, or costs that may accrue, are a lien on the real property underlying the establishment as provided in G.S. § 105-355(a). Moreover, the deferred taxes, which are the difference in taxes carried forward in records by the Department, for the preceding three calendar years are due and payable on the day the establishment is no longer covered due to the occurrence of a disqualifying event. A disqualifying event occurs when the title to the real property underlying the establishment is transferred to a new owner. The amount collected in deferred taxes cannot exceed the tax value of the property and the lien for deferred taxes is extinguished when the amount required by this section is paid.

(Effective January 1, 2017; SB 575, s. 2(b) and 2(c), S.L. 16-23)

SALES AND USE TAX

SECTION 4

SALES AND USE TAX – ARTICLE 5

DEFINITIONS

G.S. 105-164.3 – Definitions: The 2015 and 2016 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 "[d]efined 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.)

Clothing – (3). The definition for this term is repealed.

(Effective May 11, 2016; SB 729, s.3.2.(a), S.L. 16-5.)

Clothing – (3). This term is readopted and is defined as "[a]ll human wearing apparel suitable for general use."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Clothing Accessories or Equipment – (4). This term is repealed.

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)

Energy Star Qualified Product – (8g). This term is repealed.

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)

Jet Fuel – (16b). This term is added and is "[d]efined 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.)

Landscaping Service – (16e). This term is added and is defined as "[a] service to maintain or improve lawns, yards, or ornamental plants and trees. Examples include the installation of trees, shrubs, or flowers; tree trimming; lawn mowing; and the application of seed, mulch, pesticide, or fertilizer to a lawn or yard."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Moped – (22). The definition of this term as amended is "[a]s defined in G.S. 20-4.01(27)d1."

(Effective December 1, 2016; HB 959, s. 13.(h), S.L. 16-90.)

Motor Vehicle Service Contract – (23a). This term is added and is defined as "[a] service contract sold by a motor vehicle dealer or by or on behalf of a motor vehicle service agreement company for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle. For purposes of this subdivision, the term 'motor vehicle dealer' has the same meaning as defined in G.S. 20-286 and the term 'motor vehicle service agreement company' has the same meaning as defined in G.S. 66-370."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

NAICS – (23c). This term was previously codified as G.S. 105-164.3(23a).

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Prepared Food – (28)c. The definition of this term is amended to clarify that "[a] plate does not include a container or packaging used to transport the food."

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)

Purchase – (32). The definition of 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.)

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.)

Qualifying Datacenter – (33c). The definition of this term is amended to remove incorrect cross-references and include the applicable wage, health insurance, and environmental impact standards. The term as amended is defined as "[a] datacenter that satisfies each of the following conditions:

a. The datacenter *certifies that it satisfies the wage standard for the development tier area or zone in which the datacenter is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the datacenter is located. The wage standard for a development tier two area or a development tier three area is an average weekly wage that is at least equal to one hundred ten percent (110%) of the lesser of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the datacenter is located.* [Emphasis added.]
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.
c. *The datacenter certifies that it provides health insurance for all of its full-time employees. The datacenter provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommend by the Small Employer Carrier Committee pursuant to G.S. 58-50-125."* [Emphasis added.]

(Effective May 11, 2016; SB 729, s. 5.5.(a), S.L. 16-5.)

Qualifying Datacenter – (33c). The definition of this term is amended to make a technical correction and replace the word "recommend" with "recommended."

(Effective July 11, 2016; SB 803, s. 2.2., S.L. 16-92.)

Real Property – (33d). This term is added and is defined as "[a]ny one or more of the following:

a. Land.
b. Building or structure on land.
c. Permanent fixture on land.
d. A manufactured home or a modular home that is placed on a permanent foundation."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030; s. 38.5.(d), S.L. 16-94.)

Real Property Contract – (33e). This term is added and is defined as "[a] contract between a real property contractor and another person to perform construction, reconstruction, or remodeling with respect to a capital improvement to real property."

(Effective January 1, 2017, and applies to contracts on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Real Property Contractor – (33d). The definition of the term 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)]."

(Effective for sales on or after March 1, 2016; HB 97, s. 32.18.(a), S.L. 15-241.)

Real Property Contractor – (33f). This term is re-codified from G.S. 105-164.3(33d) to G.S. 105-164.3(33f) and the definition as amended is "[a] person that contracts to perform a real property contract in accordance with G.S. 105-164.4H. The term includes a general contractor, a subcontractor, or a builder for purposes of G.S. 105-164.4H."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030; s. 38.5.(d), S.L. 16-94.)

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

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Remote Sale – (33h). This term was previously codified as G.S. 105-164.3(33f).
(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030; s. 38.5.(d), S.L. 16-94.)

Repair, Maintenance, and Installation Services – (33g). This term is added and is defined as including "the activities listed in this subdivision:

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.)

Repair, Maintenance, and Installation Services – 33(i). This term is re-codified from G.S. 105-164.3(33g), and the definition as amended is "[t]he term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicle, digital property, and real property except tangible personal property or digital property installed or applied by a real property contractor pursuant to a real property contract taxed in accordance with G.S.105-164.4H:

a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent *deterioration or repairs. Examples include to clean, wash, or polish property.*
b. To calibrate, *refinish,* restore, or attempt to *calibrate, refinish, or restore* 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 property or a motor vehicle to proper working order or good condition.
d. To *install, apply, connect, adjust, or set into position* tangible personal property, *digital property, or a motor vehicle.*
e. *To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property."* [Emphasis added.]

(Effective January 1, 2017, and applies to sales made on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

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.)

Retail Trade – (34a). This term is repealed.

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Retailer – (35). The definition of the term is 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 – (35). The definition of the term is amended to provide the term does not include a real property contractor. Additionally, as amended, the term **includes a person whose only business activity is providing repair, maintenance, and installation services.** The definition as amended 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 for storage, use, or consumption in this State, or services sourced to 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, *other than a real property contractor*, engaged in business of delivering, erecting, installing, or applying tangible personal property or digital property for use in this State. [Emphasis added.]

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 State tax levied under [Article 5 of Chapter 105 of the North Carolina General Statutes] or the local taxes levied under Subchapter VIII of [Chapter 105 of the North Carolina General Statutes] and under Chapter 1096 of the 1967 Session Laws."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Retailer-Contractor – (35a). The definition of the term as amended is "[a] person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Sale or Selling – (36). The definition of this term is amended to clarify that the term applies to an item, service, or transaction subject to tax under the sales and use tax statutes.

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

School Instructional Material – (37b). This term is repealed.

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)

School Supply – (37d). This term is repealed.

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)

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 made 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.)

Service Contract – (38b). The definition of this term is amended to include a contract "where the obligor under the contract agrees to *maintain, monitor, inspect,* or repair *digital property* or tangible personal property *for a period of time or some other defined measure*, regardless of whether the property becomes a part of or is *applied* to real property. *The term does not include a single repair, maintenance, or installation service. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty.* Examples include a warranty agreement other than a

manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract." [Emphasis added.]

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(d), S.L. 16-94.)

Sport or Recreational Equipment – (42). This term is repealed.

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)
Storage – (44). This term is amended to remove the statutory exclusions from the definition of "storage." The definition as amended is "[t]he keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or digital property *for any period of time* purchased from a person in business." [Emphasis added.]

(Effective January 1, 2017; SB 729, s. 3.2.(b), S.L. 16-5.)

Streamlined Agreement – (45a). This term is amended to update the date in the definition for the agreement to September 17, 2015.

(Effective May 11, 2016; SB 729, s. 3.2.(a), S.L. 16-5.)

SALES AND USE TAX IMPOSITIONS

G.S. 105-164.4(a)(1) Sales Tax Imposed at the General State Rate on Tangible Personal Property at Retail: This subdivision is amended to provide "[t]his subdivision does not apply to repair, maintenance, and installation services for real property; these services are taxable under subdivision (16) of this subsection."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(e), S.L. 16-94.)

G.S. 105-164.4(a)(13) Sales Tax Imposed at the General State Rate on Tangible Personal Property Sold to a Real Property Contractor: This subdivision is rewritten and states "[t]he general rate of tax applies to the sales price of an item or service subject to tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] sold to a real property contractor for use by the real property contractor or to fulfill a real property contract. These sales are taxed in accordance with G.S. 105-164.4H."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(e), S.L. 16-94.)

G.S. 105-164.4(a)(15) Sales Tax Imposed on Aviation Gasoline and Jet Fuel: This subdivision 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 rate of tax applies 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. 105-164.4(a)(16) is amended to provide that "[t]he general rate applies to the sales price of or gross receipts derived from repair, maintenance, and installation services and *includes any tangible personal property or digital property that becomes a part of or is applied to a purchaser's property*." [Emphasis added.]

(Effective January 1, 2017and applies to sales made on or after that date; HB 1030, s. 38.5.(e), S.L. 16-94.)

G.S. 105-164.4(b) Sales Tax Imposed on Retailers and Certain Facilitators: This subsection is rewritten to add clarifying language that "[t]he requirements of this subsection apply to facilitators liable for tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]."

(Effective July 11, 2016; SB 803, s. 2.3., S.L. 16-92.)

G.S. 105-164.4(c) Certificate of Registration: This subsection is amended to delete a statutory reference to "G.S. 105-164.4F" and replace it with "this Article."

(Effective July 11, 2016; SB 803, s. 2.3., S.L. 16-92.)

G.S. 105-164.4D(a) Bundled Transaction for Service Contract that Includes Two or More Services: Subsection (a) is amended and provides "[t]ax applies to the sales price of a bundled transaction unless one of the following applies:

(6) *Service Contract.* – The bundle includes a contract for two or more services, one of which is subject to tax under . . . Article [5 of Chapter 105 of the North Carolina Statutes] and one of which is not subject to tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. The person must determine an allocated price for the taxable service portion of the contract in the bundle based

on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business."

Where a person is unable to support an allocation of revenue in the business records kept in the ordinary course of business, the entire sales price of the bundled transaction is subject to sales or use tax.

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(f), S.L. 16-94.)

G.S. 105-164.4G(b) Retailer of Admission Charge to an Entertainment Activity: The statute is amended and provides that for purposes of tax imposed on the gross receipts derived from an admission charge to an entertainment activity, "the retailer is the applicable person listed below:

(1) The operator of the venue where the entertainment activity occurs, unless the retailer and the facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
(2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
(3) *A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.*" [Emphasis added.]

(Effective May 11, 2016; SB 729, s. 3.4., S.L. 16-5.)

G.S. 105-164.4H Application of Sales and Use Tax to Real Property Contracts: Subsection (b) is amended to replace the term "affixed" with the term "applied" when referring to real property for consistency with other statutory language.

(Effective May 11, 2016; SB 729, s.3.5., S.L. 16-5.)

Subsection (c) is amended to remove the language "the provisions of G.S. 105-164.11(a)(2) do not apply." As amended, the provisions of G.S. 105-164.11(a)(2) may apply to an erroneous collection of sales tax by a real property contractor or a retailer-contractor on the gross receipts derived from a real property contract.

(Effective retroactive to January 1, 2015; HB 1030, s. 38.5.(c), S.L. 16-94; HB 805, s. 11.5, S.L. 16-123.)

The section, with emphasis added, is substantially amended as follows:

(a) **Applicability.** – A real property contractor is the consumer of the tangible personal property, *digital property, or service* that the real property contractor *purchases, installs* or applies for others *to fulfill a real property contract* and that becomes part of real *property or used to fulfill the contract.* A retailer engaged in business in the State shall collect [sales or

use] tax on the sales price of the tangible personal property, *digital property, or service* 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 *or digital property* for storage, use, or consumption in this *State, or a service sourced to this State* and the [sales or 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 as follows:

(1) ***Acting as a real property contractor.*** – A retailer-contractor acts as a real property *contractor when it contracts to perform a real property contract.* A retailer-contractor that purchases tangible personal property *or digital property* to be installed or applied to real property *or a service to fulfill the contract* may purchase *those* items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory items *or services* from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, *or when the service is deemed used*, use tax must be accrued and paid on the retailer-contractor's purchase price of the property. *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 . . . Article [5 of Chapter 105 of the North Carolina General Statutes].

(2) ***Acting as a retailer.*** *– A retailer-contractor is acting as a retailer when it makes a sale at retail.*

(b1) **Joint and Several Liability. –** If a retailer-contractor subcontracts any part of the real property contract, tax is payable by the subcontractor on the subcontractor's purchase of the tangible personal property *or digital property* that is installed or applied to real property *or a service used to fulfill* the contract. The retailer-contractor, the subcontractor, the owner of the real property*, and the lessee of the real property,* are jointly and severally liable for the tax. The liability of a retailer-contractor, a subcontractor, an owner*, or lessee* who did not purchase the property *or service* is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) **Erroneous Collection if Separately Stated. –** An invoice or other documentation issued to a *person* by a real property contractor shall not separately state any amount for *tax for a real property contract*. Any amount for tax separately stated on an invoice or other documentation given to a *person* by a real property contractor is an erroneous collection and must be remitted to the Secretary

(d) ***Mixed Transaction Contract.*** *– A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services is taxable as follows:*

(1) If the price of the taxable repair, maintenance, and installation services included in the contract does not exceed ten percent (10%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the tangible personal property, digital property, or service used to perform that service, are taxable as a real property contract in accordance with this section.

(2) *If the price of the taxable repair, maintenance, and installation services included in the contract is equal to or greater than ten percent (10%) of the contract price, then sales and use tax applies to the taxable repair, maintenance, and installation services portion of the contract. The person must determine an allocated price for each taxable repair, maintenance, and installation service in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of tangible personal property, digital property, or services to fulfill the real property contract are taxed in accordance with this section.*

(e) ***Definitions.*** *– The following definitions apply in this Article:*

(1) Capital improvement. – An addition or alteration to real property that is new construction, reconstruction, or remodeling of a building, structure, or fixture on land that becomes part of the real property or is permanently installed or applied to the real property so that removal would cause material damage to the property or article itself. The term includes an addition or an alteration to real property for or by a lessee or tenant, provided it is intended to become a permanent installation and title to it vests in the owner or lessor of the real property immediately upon installation. The term does not include the replacement of a fixture in or on a building or structure unless the replacement is part of a remodeling. The term does not include a single repair, maintenance, or installation service. The term includes, but is not limited to, all of the following:

a. Removal of items from real property, such as debris, construction materials, asbestos, or excavation activities, including the removal of items from a structure such as a dumpster.

b. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.

c. Installation of underground utilities, notwithstanding that charges for such are included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4.

d. Installation of equipment or fixture that is attached to real property so that removal of the item would cause physical, functional, or economic damage to the property and that is capitalized under one

or more of the following: the Code, Generally Accepted Accounting Principles, or International Financial Reporting Standards.

e. Painting or wallpapering.

f. Replacement or installation of a roofing, septic tank, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system.

g. Replacement or installation of a heating, ventilation, and air conditioning unit or system.

h. Replacement or installation of roads, driveways, parking lots, and sidewalks.

i. Landscaping service.

(2) New construction. – Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.

(3) Reconstruction. – Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.

(4) Remodeling. – The process of improving or updating a permanent building, structure, or fixture on land or major portions thereof. The term includes renovation. [Emphasis added.]

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(c) and 38.5.(g), S.L. 16-94. Technical corrections were made to the language prior to the effective date; HB 1030, S.38.5.(c) and 38.5.(g), S.L. 16-94; HB 805, s. 11.2., 11.3.(b) and 11.4.(a), S.L. 16-123.)

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 tax 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 an item, service, or transaction subject to tax under the sales and use tax statutes.

MISCELLANEOUS ITEMS

S.L. 2015-6, s. 2.13.(b) Exemptions for Farmers: This section is amended to correct a statutory reference in the effective date language. The statutory reference is G.S. 105-164.13E(c).

(Effective July 1, 2014; SB 729, s. 3.12.(b), S.L. 16-5.)

S.L. 2016-94, s. 38.5.(a): This section is added to clarify the grace periods as a result of changes made under S.L. 2015-241, Section 32.18 and under Part V of S.L. 2015-259 for retail trade, repair, maintenance, and installation services, and service contracts. A retailer is not liable for the undercollection of sales or use tax as a result of the changes if "the retailer made a good-faith effort to comply with the law and collect the proper amount of tax. This applies only to the period beginning March 1, 2016, and ending December 31, 2016."

(Effective July 14, 2016; HB 1030, S. 38.5.(a), S.L. 16-94.)

G.S. 105-164.4B(e) Sourcing Principles: This subsection is amended to correct the statutory reference for the definition of "rental of an accommodation" to G.S. 105-164.4F for purposes of sourcing such rentals.

(Effective May 11, 2016; SB 729, s. 3.3., S.L. 16-5.)

G.S. 105-164.4D(b) Determining Threshold for a Bundled Transaction: This subsection is amended to replace the term "cost price" with the term "purchase price," which is a defined term.

(Effective May 11, 2016; SB 729, s. 3.7.(a), S.L. 16-5.)

G.S. 105-164.7 Retailer or facilitator to collect sales tax from purchaser as trustee for State: This section is amended to provide that the "requirements of this section apply to facilitators liable for tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]." The facilitator is a trustee for the State when he collects the sales tax from the purchaser.

(Effective July 11, 2016; SB 803, s. 2.4., S.L. 16-92.)

G.S. 105-164.12B Tangible personal property sold below cost with conditional contract: This section is amended as follows:

Conditional Contract Defined (a). This subsection is amended to change the term "conditional service contract" to "conditional contract" to clarify that this statutory section does not apply to transactions for a "service contract," as defined in G.S. 105-164.3.

Tax (b). This subsection clarifies the presumed sales price of the item when a portion of the conditional contract is taxable and a portion of it is not taxable. Sales tax at the general rate under G.S. 105-164.4(a) is due at the time of the transfer on the "percentage of the presumed sales price that is equal to the percentage of the service in the contract that is not subject to tax at the combined general rate, if any part of the service in the contract is not taxable at the combined general rate."

The local and transit rates of tax apply to the presumed sales price. See the discussion for G.S. 105-467(a) under Local Sales and Use Tax – Subchapter VIII for additional information.

(Effective May 11, 2016; SB 729, s. 3.8.(a), S.L. 16-5.)

EXEMPTIONS AND EXCLUSIONS

G.S. 105-164.4I(b) Service Contract Exemptions

The following subdivisions regarding service contract exemptions were either added or amended as noted below:

Service Contract for a Motor Vehicle (1). This subdivision 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 North Carolina 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.)

This subdivision is further amended to provide "[t]his exemption does not apply to water maintained under a service contract for a pool, fish tank, or similar aquatic feature."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(h), S.L. 16-94.)

***Service Contract Exemption – Motorsports (3)*.** This subdivision 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*, *leased, or rented* by a professional motorsports racing team or a related member of a team for which the team *or related member* may receive a *sales tax exemption under G.S. 105-164.13(65) or G.S. 105-164.13(65a) or a* sales tax refund under G.S. 105-164.14A(a)(5). This subdivision expires January 1, 2020." [Emphasis added.]

(Effective retroactively to January 1, 2014; SB 729, s. 3.24.(a), S.L. 16-5.)

***Service Contract Exemption – Motor Vehicle Service Contract (6)**:* This subdivision is added to include an exemption for a motor vehicle service contract, as defined in G.S. 105-164.3.

(Effective January 1, 2017, and applies to sales on or after that date; HB 1030, s. 38.5.(h), S.L. 16-94.)

***Service Contract Exemption – Repair, Maintenance, and Installation Services (7)**:* This subdivision is added to include an exemption for repair, maintenance, and installation services exempt under G.S. 105-164.13(61a).

(Effective January 1, 2017, and applies to sales on or after that date; HB 1030, s. 38.5.(h), S.L. 16-94.)

G.S. 105-164.4I(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. 105-164.13 Exemptions and Exclusions: The 2015 and 2016 General Assembly repealed, added, and enacted clarifying changes to the exemptions from sales and use tax. The changes and their effective dates are as follows:

Sales of aviation gasoline and jet fuel . . . – (11b). This subsection 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 exemption also applies to aviation gasoline and jet fuel purchased for

use in a commercial aircraft in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. 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; SB 729, s. 3.23.(a), S.L. 16-5; SB 803, s. 2.1.(a), S.L. 16-92.)

Food, prepared food, candy . . . sold not for profit . . . – (26b). This subsection is added and provides an exemption for "[f]ood, prepared food, soft drinks, candy, and other items of tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term 'school' is an entity regulated under Chapter 115C of the General Statutes."

(Effective January 1, 2017 and applies to sales made on or after date; SB 729, s. 3.9.(b), S.L. 16-5.)

Sales of motor vehicles . . . – (32). This subdivision is amended to clarify that "[f]or purposes of this exemption, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle."

(Effective July 1, 2016; SB 729, s. 3.19.(b), S.L. 16-5.)

Sales of items by a nonprofit . . . – (34). This exemption is repealed. Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the State or to one or more of its agencies or instrumentalities are subject to the applicable rates of sales and use tax.

(Effective January 1, 2017, and applies to sales made on or after that date; SB 729, s. 3.9.(a), S.L. 16-5.)

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.)

Items subject to sales and use tax . . . – (52). This subdivision is amended to correct the statutory reference to "as defined in G.S. 105-164.3."

(Effective January 1, 2017; SB 729, s. 3.11.(a), S.L. 16-5.)

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, electricity, and piped natural gas sold to a manufacturer . . . – (57). This subdivision is amended. The language of the exemption as amended states "[f]uel, electricity, and piped natural gas sold to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to the following:

a. Electricity used at a facility at which the primary activity is not manufacturing.
b. Fuel and piped natural gas that is used *solely* for comfort heating at a manufacturing facility where there is no use of fuel or piped natural gas in a manufacturing process." [Emphasis added]

(Effective January 1, 2017; SB 729, s. 3.11.(a), S.L. 16-5. See the Important Notice: Fuel or Piped Natural Gas Used Solely for Comfort Heating by Certain Manufacturers for additional information regarding application of the effective date pursuant to G.S. 105-164.15A.)

Fuel, piped natural gas, and electricity sold to a secondary metals recycler . . . – (57a). This subdivision is added and provides an exemption for "[f]uel, piped natural gas, and electricity sold to a secondary metals recycler for use in recycling at its facility at which the primary activity is recycling."

(Effective July 1, 2016; HB 1030, s. 38.2.(c), S.L. 16-94.)

Service contract . . . – (61). This subdivision is amended to remove the term "for tangible personal property" and to provide that "[a] service contract may be exempt as provided in G.S. 105-164.4I."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

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.)

The exemption, as provided above, remains in effect and is expanded by adding the following:

> "Sales of or the gross receipts derived from the following repair, maintenance, and installation services are exempt from tax:

a. A fee or charge for an inspection required by law, regardless of whether the amount is paid to a public or private entity, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
b. Services performed for a person by a related member [as defined by G.S. 105-130.7A].
c. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion of the real property contract or, for new construction, within 12 months of the new structure being occupied for the first time.
d. Cleaning of real property, except where the service constitutes a part of the gross receipts derived from the rental of an accommodation subject to tax under G.S. 105-164.4 or for a pool, fish tank, or other similar aquatic feature.
e. Services on roads, driveways, parking lots, and sidewalks.
f. Removal of waste, trash, debris, grease, snow, and other similar items from tangible personal property, including a motor vehicle, and real property, but does not include removal of waste from portable toilets.
g. Home inspections related to the preparation for or the sale of real property.
h. Landscaping service [as defined by G.S. 105-164.3(16e)].
i. Alteration and repair of clothing, except where the service constitutes a part of the gross receipts derived from the rental of clothing subject to tax under G.S 105-164.4 or for alteration and repair of belts and shoes.
j. Pest control service.
k. Moving services.
l. Self-service car washes."

(Effective January 1, 2017, and applies to sales on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

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.)*

Effective January 1, 2017, "[r]epair, maintenance, and installation services purchased for resale" is deleted and an exemption from sales and use tax is provided for "[t]angible personal property, digital property, and services purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A."

(Effective January 1, 2017, and applies to sales on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

Installation charges . . . real property contract . . . – (61c). This subdivision is added and provides an exemption for "[i]nstallation charges that are a part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

Installation charges . . . real property contract . . . – (61d). This subdivision is added and provides an exemption for "[i]nstallation charges that are a part of the sales price of or gross receipts derived from repair, maintenance, and installation services or installation charges only purchased by a real property contractor to fulfill a real property contract, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages, or labor purchased from a third party that would otherwise be included in the definition of 'purchase price.'"

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

An item or repair, maintenance, and installation services used to maintain, or repair . . . – (62). This subdivision is amended 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 . . . Article [5 of Chapter 105 of the North Carolina General Statutes] 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 . . . Article [5 of Chapter 105 of the North Carolina General Statutes] 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." [Emphasis added.]

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

This subdivision is further amended and as rewritten provides an exemption from sales and use tax for "[a]n item or repair, maintenance, and installation services used to maintain, monitor, inspect, or repair tangible personal property or digital property pursuant to a service contract taxable under . . . Article [5 of Chapter 105 of the North

Carolina General Statutes] if 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 that is not deemed to be a component or repair part of the tangible personal property or digital property for which a service contract is sold to a purchaser."

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

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.)

Food and prepared food to be provided . . . under a prepaid meal plan . . . – (63). This subdivision is amended and provides an exemption for "[f]ood and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12). *This exemption applies to packaging items including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:*

a. *Used for packaging, shipment, or delivery of the food and prepared food.*
b. *Constitute a part of the sale of the food and prepared food.*
c. *Delivered with the food and prepared food."* [Emphasis added.]

(Effective July 11, 2016; SB 803, S. 2.5., S.L. 16-92.)

Storage of a motor vehicle . . . – (66). This subdivision is added and provides an exemption for "[s]torage of a motor vehicle, *provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale."* [Emphasis added.]

(Effective January 1, 2017 for sales made on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

Towing services . . . – (67). This subdivision is added and provides an exemption for "[t]owing services, *provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale*." [Emphasis added.]

(Effective January 1, 2017 for sales made on or after that date; HB 1030, s. 38.5.(i), S.L. 16-94.)

Sales of products . . . more than seventy-five percent (75%) by weight of recycled materials . . . – (68). This subdivision is added and provides an exemption for "[s]ales of products that are made of more than seventy-five percent (75%) by weight of recycled materials when the products are sold for use in an accepted wastewater dispersal system as defined in G.S. 130A-343."

(Effective October 1, 2016, and applies to sales made on or after that date; HB 1030, s. 38.5.(p), S.L. 16-94.)

G.S. 105-164.13E – Exemption for Farmers: The following subsections in this section were either added or amended as noted below:

G.S. 105-164.13E(a)(10) – This subdivision is added to expressly codify an exemption for repair, maintenance, and installation services purchased by a qualifying or conditional farmer and for use by the farmer in farming operations. 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. See the exemption under G.S. 105-164.13(61a) applicable to repair, maintenance, and installation services purchased by a qualifying or conditional farmer on or after March 1, 2016 and prior to January 1, 2017.

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(j), S.L. 16-94.)

G.S. 105-164.13E(c) This subsection is amended to change the term "agricultural" to "qualifying farmer or conditional farmer".

(Effective July 1, 2014; SB 729, s. 3.12.(a), S.L. 16-5.)

S.L. 2015-6 – Rewrite of Effective Date for Contractors Who Paid Sales and Use Tax: Section 2.13(b) of S.L. 2015-6 is rewritten to correct a statutory reference. As rewritten, the language reads "[t]his section becomes effective July 1, 2014. A contractor who paid sales and use tax on an item exempt from sales and use tax pursuant to G.S. 105-164.13E(c), as enacted by this section, 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) from the Secretary.

(Effective July 1, 2014; SB 729, s. 3.12.(b), S.L. 16-5.)

REFUNDS AUTHORIZED FOR CERTAIN PERSONS

G.S. 105-164.14(e) – State Agencies: This subsection is amended to provide that the quarterly refunds of local sales and use taxes allowed by the subsection do not apply to "a State agency that is ineligible for a sales and use tax exemption number under G.S. 105-164.29A(a)." Therefore, an occupational licensing board, as defined in G.S. 93B-1 or an entity listed in G.S. 105-164.14(c) should not file a written application for a refund of taxes pursuant to this subsection.

(Effective July 1, 2017; SB 729, s. 3.22.(b), S.L. 16-5.)

G.S. 105-164.14A(a)(3) – Economic Incentive Refunds: This subdivision is repealed.

(Effective May 11, 2016; SB 729, s. 3.14., S.L. 16-5.)

OTHER PROVISIONS

G.S. 105-164.15A(b) – Effective Date of Tax Changes – Combined Rate Items: The subsection is amended and reads as follows:

> "The effective date of a rate change for an item that is taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] at the combined general rate *is administered as follows:*
>
> *(1) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the* effective date of a change in the State general rate of tax set in G.S. 105-164.4.
>
> *(*1a*) For a taxable item that is provided and billed on a monthly or other periodic basis:*
>
> *a. A tax increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.*
>
> *b. A tax rate decrease applies to bills rendered on or after the effective date."* [Emphasis added.]

(Effective July 11, 2016; SB 803, s. 2.6., S.L. 16-92.)

G.S. 105-164.22 – Record-Keeping Requirements, Inspection Authority, and Effect of Failure to Keep Records: This section is amended to remove the reference to keep records for a "period of three years."

(Effective May 11, 2016; SB 729, s. 3.15., S.L. 16-5.)

G.S. 105-164.27A – Direct Pay Permit: *General – (a).* Subsection (a) is amended to replace the term "any" with the term "certain" and to add a "general direct pay permit ay not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section."

Boat and Aircraft – (a3). Subsection (a3) is added to provide that "[a] direct pay permit issued under this subsection authorizes its holder to purchase tangible personal property, digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the item or services from the permit holder." A person purchasing an item under a direct pay permit is liable for use tax on the purchase. The direct pay permit allows the holder "a use tax exemption on one or more of the following:

(i) the installation charges that are a part of the sales price of tangible personal property or digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, **provided the installation charges are separately stated and identified as such** on the invoice or other documentation given to the permit holder at the time of the sale and

(ii) the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a boat, an aircraft, or a qualified jet engine. The amount of the use tax exemption is the amount of the installation charges and sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars ($25,000)." [Emphasis added.]

(Effective July 1, 2016, and applies to purchases of repair, maintenance, and installation services purchased on or after that date; HB 1030, s. 38.5.(m), S.L. 16-94.)

G.S. 105-164.29A(a) – State Government Exemption Process: This subsection is amended to clarify that "an occupational licensing board, as defined in G.S. 93B-1" or "an entity listed in G.S. 105-164.14(c)" is not eligible for a State agency sales tax exemption number and the exemption in G.S. 105-164.13(52) does not apply to sales to or purchases by such board or entity.

(Effective July 1, 2017; SB 729, s. 3.22.(a), S.L. 16-5.)

G.S. 105-164.30 – Secretary or Agent May Examine Books, etc.: This section is amended to clarify "data" may be examined by the Secretary or his duly authorized agent.

(Effective May 11, 2016; SB 729, s. 3.16., S.L. 16-5.)

G.S. 105-164.42I(b) – Contract with Certified Service Provider and Effect of Contract: This subsection is amended to provide that the certified service provider must file with the Streamlined Sales Tax Governing Board or the Secretary of Revenue "one of the following in the amount set by the Secretary: (i) a bond; (ii) an irrevocable letter of credit; or (iii) evidence of a certificate of deposit. A bond, irrevocable letter of credit, or certificate of deposit must be conditioned upon compliance with the contract, be payable to the State or the Streamlined Sales Tax Governing Board, and be in the form required by the Secretary or the Streamlined Sales Tax Governing Board. The

amount a certified service provider charges under the contract is a cost of collecting the tax and is payable from the amount collected."

(Effective May 11, 2016; SB 729, s. 3.18., S.L. 16-5.)

G.S. 105-164.42L – Liability Relief for Erroneous Information or Insufficient Notice by Department: Subsection (a) is amended to provide that a person who relies on erroneous information provided on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions in databases developed by the Secretary is not liable for underpayments of tax attributable to the erroneous information *until 10 business days after the date of notification by the Secretary*. Subsection (b) is amended to codify the Streamlined Sales and Use Tax Agreement requirement to provide information on certain administration requirements. A person, who relies on the information provided by the Secretary in the taxability matrix, is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix *until 10 business days after the date of notification by the Secretary*. [Emphasis added.]

(Effective May 11, 2016; SB 729, s. 3.17.(a), S.L. 16-5.)

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. 105-466(c) – Levy of Local Tax: This subsection is amended to codify that a local tax increase "may only be effective on the first day of a calendar quarter after a minimum of 60 days' notice to sellers by the Secretary." This amendment does not change the requirement provided by the subsection that a "county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change."

(Effective May 11, 2016; SB 729, s. 3.17.(b), S.L. 16-5.)

G.S. 105-467(a)(8) – Local Tax: A new subdivision is added to provide "[t]he presumed sales price of an item of tangible personal property under G.S.105-164.12B" is subject to local tax. See the discussion for G.S. 105-164.12B under the Sales and Use Tax – Article 5 section for additional information.

(Effective May 11, 2016, and applies to sales made on or after that date; SB 729, s. 3.8.(b), S.L. 16-5.)

G.S. 105-467(b) – Local Tax: This subsection is amended to include a statutory reference to G.S. 105-164.27A.

(Effective July 1, 2016, and applies to purchases of repair, maintenance, and installation services purchased on or after that date; HB 1030, s. 38.5.(n), S.L. 16-94.)

G.S. 105-468 – Scope of Use Tax: This section is amended to replace the term "cost price" with the term "purchase price," which is a defined term in G.S. 105-164.3.

(Effective May 11, 2016; SB 729, s. 3.7.(b), S.L. 16-5.)

G.S. 105-469(a) – Local Tax: This subsection is amended and as rewritten states "[t]he Secretary shall collect and administer a tax levied by a county pursuant to . . . Article [39 of Chapter 105 of the North Carolina General Statutes]. 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 . . . Chapter [105 of the North Carolina General Statutes]. The references in this section to Article 39 of . . . Chapter [105 of the North Carolina General Statutes] and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of . . . Chapter [105 of the North Carolina General Statutes] 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. 105-471 – Retailer to Collect Sales Tax: This section is amended to change the term "cost price" to the term "purchase price." "Purchase price" is defined in G.S. 105-164.3.

(Effective May 11, 2016; SB 729, s. 3.7.(c), S.L. 16-5.)

G.S. 105-521 – Transitional Local Government Hold Harmless for Repealed Reimbursements: This section is repealed.

(Effective May 11, 2016; SB 729, s. 5.2., S.L. 16-5.)

G.S. 105-522(a)(2) – City Hold Harmless for Repealed Local Taxes: This subdivision 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 . . . Chapter [105 of the North Carolina General Statutes] and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of . . . Chapter [105 of

the North Carolina General Statutes] 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, 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 subdivision 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 . . . Chapter [105 of the North Carolina General Statutes] and Chapter 1096 of the 1967 Session Laws

and Articles 40 and 42 of . . . Chapter [105 of the North Carolina General Statutes] 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 [North Carolina] 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 [of Chapter 105 of the North Carolina General Statutes] and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of . . . Chapter [105 of the North Carolina General Statutes], 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:

County	**Allocation Percentage**
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%

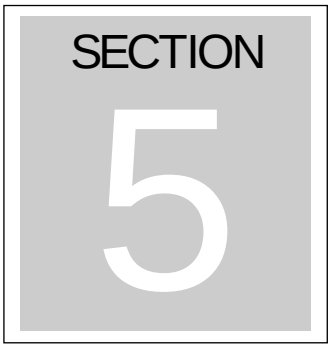
Watauga	0.00%
Wayne	2.27%
Wilkes	1.55%
Wilson	0.39%
Yadkin	1.31%
Yancey	0.52%

(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) Repealed for fiscal years beginning on or after July 1, 2016.
(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 . . . Chapter [105 of the North Carolina General Statutes] 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 . . . Chapter [105 of the North Carolina General Statutes], and the second one-half cent (1/2¢) local sales and use tax under Article 42 of . . . Chapter [105 of the North Carolina General Statutes].
(g) **Adjustments**. – The adjustments made under this section to Article 39 of . . . Chapter [105 of the North Carolina General Statutes] and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of . . . Chapter [105 of the North Carolina General Statutes] 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; subsection (e) is repealed for fiscal years beginning on or after July 1, 2016; HB 1030, s. 38.5.(o), S.L. 16-94.)

G.S. 105-538 – Administration of taxes: This section is amended to provide the following: "*The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under . . . Article [46 of Chapter 105 of the North Carolina General Statutes]. If the Secretary collects taxes under . . . Article [46 of Chapter 105 of the North Carolina General Statutes] in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under . . . Article [46 of Chapter 105 of the North Carolina General Statutes] in that month. For purposes of . . . Article [46 of Chapter 105 of the North Carolina General Statutes], the term 'net proceeds' has the same meaning as defined in G.S. 105-472."* [Emphasis added.]
(Effective May 11, 2016; SB 729, s. 3.21., S.L. 16-5.)

White Goods Disposal Tax



White Goods Disposal Tax – Article 5C

G.S. 105-187.21 – Tax Imposed: This section as amended states "[a] privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is three dollars ($3.00). These taxes are in addition to all other taxes." A retailer-contractor is liable for the White Goods Disposal Tax for any white good withdrawn from inventory to fulfill a real property contract in the State on or after July 1, 2016. A retailer-contractor is not liable for the White Goods Disposal Tax on a white good withdrawn from inventory prior to July 1, 2016 to fulfill a real property contract in the State.

(Effective July 1, 2016; SB 729, s. 3.20.(a), S.L. 16-5.)

Highway Use Tax

SECTION 6

Highway Use Tax – Article 5A

G.S. 105-187.1 – Definitions: This section is amended to provide a definition for the term "park model RV" and to amend the definition for "recreational vehicle" to clarify that "[t]he term also includes a park model RV." The retail sale of a park model RV is subject to the highway use tax at the rate of three percent (3.00%) with a maximum tax of two thousand dollars ($2,000) and is payable to the North Carolina Division of Motor Vehicles.

Park model RV – (3a). This term is added and is defined as "[a] vehicle that meets all of the following conditions:

a. Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.
b. Is certified by the manufacturer as complying with ANSI A119.5.
c. Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode."

(Effective July 1, 2016; SB 729, s. 3.19.(a), S.L. 16-5. The definition of "Park model RV" was designated as subdivision (4) by S.L. 16-5. The definition was redesignated as subdivision (3a) at the direction of the Revisor of Statutes.)

Recreational vehicle – (4). This term is amended to clarify that "[t]he term also includes a park model RV."

(Effective July 1, 2016; SB 729, s. 3.19.(a), S.L. 16-5. The definition of "recreational vehicle" was designated as subdivision (5) by S.L. 16-5. The definition was redesignated as subdivision (4) at the direction of the Revisor of Statutes.)

G.S. 105-187.3(a) – Tax Base: This subsection is amended and provides, "[t]he tax imposed by . . . Article [5A of Chapter 105 of the North Carolina General Statutes] 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 subdivision 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 . . . Article [5A of Chapter 105 of the North Carolina General Statutes] 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 . . . Article [5A of Chapter 105 of the North Carolina General Statutes]. 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.)

This subsection is further amended and provides, the charge for a service contract "*must* 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. *When a lease or rental contract is sold to another retailer, the seller of the lease or rental contract should provide to the purchaser of the lease or rental contract the documentation showing that the service contract and applicable sales taxes were separately stated at the time the lease or rental went into effect and the new retailer must retain the information to support an allocation for tax computed on the gross receipts subject to highway use tax.* 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." [Emphasis added.]

(Effective January 1, 2017, and applies to sales made on or after that date; HB 1030, s. 38.5.(k), S.L. 16-94.)

G.S. 105-187.5(b) – Rate: This subsection is amended to correct a statutory reference to G.S. 105-187.3(a1).

(Effective July 11, 2016; SB 803, s. 2.7., S.L. 16-92.)

G.S. 105-187.6(c) – Out-of-State Vehicles: This subsection is 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

SECTION 7

Certain Machinery and Equipment – Article 5F

G.S. 105-187.51(b) – Rate: This subsection is amended to change the term "sales price" to the term "purchase price," which is a defined term in G.S. 105-164.3.

(Effective July 14, 2016; HB 1030, s. 38.2.(d), S.L. 16-94.)

G.S. 105-187.51B(a)(5) – Tax Imposed on Companies Located at Ports Facilities: This subdivision is amended to provide that the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article is imposed on "[a] company located at a ports facility for waterborne commerce that purchases any of the following:

a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.
b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment."

(Effective July 14, 2016, and applies retroactively to purchases made on or after July 1, 2013; HB 1030, s. 38.2.(a), S.L. 16-94.)

G.S. 105-187.51B(a)(6) – Tax Imposed on Certain Tangible Personal Property Purchases by Certain Recyclers: This is a new subdivision that imposes the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article on "[a] person other than a [major recycling facility] that gathers and obtains ferrous metals, nonferrous metals, and items that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades that purchases equipment, or an attachment or repair part for the equipment, that meets all of the following requirements:

a. Is capitalized by the person for tax purposes under the Code.
b. Is used by the person in a conversion process described in this subdivision.
c. Is not a motor vehicle or an attachment or repair part for a motor vehicle."

(Effective July 1, 2016, and applies to sales made on or after that date; HB 1030, s. 38.2.(b), S.L. 16-94, HB 805, s. 11.1 and s. 11.3.(a), S.L. 16-123.)

G.S. 105-187.51B(a)(7) – Tax Imposed on Certain Tangible Personal Property Purchases by Precious Metal Extraction Companies: This is a new subdivision that imposes the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article on "[a] company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase that purchases equipment, or an attachment or repair part for the equipment, that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.
b. Is used by the company in the process described in this subdivision."

(Effective July 1, 2016, and applies to purchases made on or after that date; HB 1030, s. 38.2.(b), S.L. 16-94, HB 805, s. 11.1 and s. 11.3.(a), S.L. 16-123.)

G.S. 105-187.51B(a)(8) – Tax Imposed on Certain Tangible Personal Property Purchases by Certain Metal Work Fabrication Companies: This is a new subdivision that imposes the 1% privilege tax with a maximum tax of eighty dollars ($80.00) per article on "[a] company (i) that is engaged in the fabrication of metal work, (ii) that has annual gross receipts, including the gross receipts of all related persons as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars ($8,000,000), and (iii) that purchases equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.
b. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products."

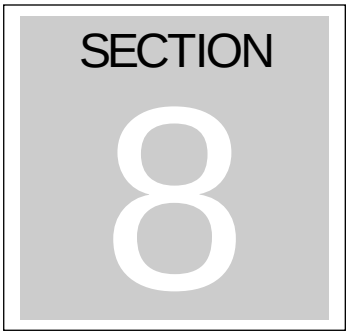
(Effective July 1, 2016, and applies to sales made on or after that date; HB 1030, s. 38.2.(b), S.L. 16-94, HB 805, s. 11.1, S.L. 16-123.)

G.S. 105-187.51B(b) – Rate: This subsection is amended to change the term "sales price" to the term "purchase price," which is a defined term in G.S. 105-164.3.

(Effective July 14, 2016, and applies retroactively to purchases made on or after January 1, 2013; HB 1030, s. 38.2.(a), S.L. 16-94.)

G.S. 105-187.51D(b) – Tax: This subsection is amended to change the term "sales price" to the term "purchase price," which is a defined term in G.S. 105-164-3.

(Effective July 14, 2016; HB 1030, s. 38.2.(e), S.L. 16-94.)



G.S. 20-4.02 - Quadrennial Adjustment of Certain Fees and Rates: (a) Adjustment for Inflation. – Beginning July 1, 2020, and every four years thereafter, the Division shall adjust the fees and rates imposed pursuant to the statutes listed in this subsection for inflation in accordance with the Consumer Price Index computed by the Bureau of Labor Statistics. The adjustment for per transaction rates in subdivision (8a) of this subsection shall be rounded to the nearest cent and all other adjustments under this subsection shall be rounded to the nearest twenty-five cents (25¢):

(1) G.S. 20-7.
(2) G.S. 20-11.
(3) G.S. 20-14.
(4) G.S. 20-16.
(5) G.S. 20-26.
(6) G.S. 20-37.15.
(7) G.S. 20-37.16.
(8) G.S. 20-42(b).
(8a) G.S. 20-63(h), with respect to the per transaction rates set in that subsection.
(9) G.S. 20-85(a)(1) through (10).
(10) G.S. 20-85.1.
(11) G.S. 20-87, except for the additional fee set forth in G.S. 20-87(6) for private motorcycles.
(12) G.S. 20-88.
(13) G.S. 20-289.
(14) G.S. 20-385.
(15) G.S. 44A-4(b)(1).

(b) Computation. – In determining the rate of inflation to use when making an adjustment pursuant to subsection (a) of this section, the Division shall base the rate on the percent change in the annual Consumer Price Index over the preceding four-year period.

(c) Rules. – The provisions of Chapter 150B of the General Statutes shall not apply to the inflation adjustment of fees required by this section.

(d) Consultation and Publication. – At least 90 days prior to making an adjustment pursuant to subsection (a) of this section, and notwithstanding any provision of G.S. 12-3.1 to the contrary, the Division shall (i) consult with the Joint Legislative Commission

on Governmental Operations, (ii) provide a report to the chairs of the Senate Appropriations Committee on Department of Transportation and the House of Representatives Appropriations Committee on Transportation, and (iii) publish notice of the fees that will be in effect in the offices of the Division and on the Division's website.

(Effective July 28, 2016; SB 791, s. 1, S.L. 2016-120.)

Chapter 134 of the 1983 Session Laws Reads as Rewritten: One half of any local government sales and use tax revenue distributed to Buncombe County under G.S. 105-472 shall be paid to the Commission by the Secretary of Revenue. This section does not affect the distribution of any local or State sales and use tax revenue to the municipalities in Buncombe County.

(Effective July 21, 2016; SB 888, s. 1, S.L. 2016-19.)

G.S.105-277.4(d). - Agricultural, Horticultural and Forestland, Deferred Taxes: (d) Set Exception. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present use value classification solely due to a change in income caused by enrollment of the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.58, then no deferred taxes are due and the lien for the deferred taxes is extinguished.

(d1) Variable Exception. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present-use value classification because the property is conveyed to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29) or to the State, a political subdivision of the State, or the United States, then deferred taxes are due as follows:

(1) If the property is conveyed at or below present-use value, then no deferred taxes are due, and the lien for the deferred taxes is extinguished.

(2) If the property is conveyed for more than present-use value, then a portion of the deferred taxes for the preceding three fiscal years is due and payable in accordance with G.S. 105-277.1F. The portion due is equal to the lesser of the amount of the deferred taxes or the deferred taxes multiplied by a fraction, the numerator of which is the sale price of the property minus the present-use value of the property and the denominator of which is the true value of the property minus the present-use value of the property.

(Effective July 1, 2016; HB 533, s. 1, S.L. 2016-76.)

G.S.153A-148.1. - Disclosure of Certain Information Prohibited: (a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts

may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

> (7) To disclose to the authorized finance officer of any municipality located within the county tax information in the possession of the county, as necessary to administer a tax.

(Effective July 11, 2016; SB 803, s. 3.1(a), S.L. 2016-92.)

G.S. 160A-208.1. - Disclosure of Certain Information Prohibited: (a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

> (5) To disclose to the authorized finance officer of the county in which the municipality is located tax information in the possession of the municipality, as necessary to administer a tax.

(Effective July 11, 2016; SB 803, s. 3.1(b), S.L. 2016-92.)

All Map Act Corridor Maps Rescinded: All transportation corridor official maps adopted pursuant to Article 2E of Chapter 136 of the General Statutes, and any amendments thereto, are hereby rescinded, and all restrictions under Article 2E of Chapter 136 of the General Statutes shall no longer apply to properties or portions of properties within the affected transportation corridors.

(Effective July 11, 2016; HB 959, s. 17, S.L. 2016-90.)

Property Tax Exclusion Extension: Section 2 of S.L. 2011-123 reads as rewritten: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxes imposed for taxable years beginning on or after July 1, 2021.

(Effective July 14, 2016; HB 1030, s. 38.6(a), S.L. 2016-94.)

North Carolina / South Carolina Boundary Confirmation: Legislative changes to facilitate the work of the Boundary Commission in confirming and reestablishing the original boundary existing between the States of North Carolina and South Carolina. For property tax purposes, the following provisions apply to taxes affected by boundary certification:

(1) Neither the State nor a subdivision of the State may assess a tax on a person for activities occurring prior to the date of certification where the basis of the assessment is the certification.

(2) The State and its subdivisions may assess a tax for activities occurring on or after the date of certification subject to the following conditions:

a. For taxes imposed for a taxable period, the tax may not be imposed for a period beginning prior to the date of certification.

b. For sales and use taxes for an item that is provided and billed on a monthly or other periodic basis, the tax may not be assessed for periods 6 beginning prior to the date of certification.

c. For a person subject to taxes levied under Article 2A of Chapter 105 of the General Statutes who, on the date of the certification, has on hand any tobacco products, the person must file a complete inventory of the tobacco products within 20 days after date of certification and must pay an additional tax to the Secretary of Revenue when filing the inventory. The amount of the tax due is the amount due based on the current tax rate less any tax paid on the inventory to another state.

d. For installments and carryforwards of tax benefits allowed by this State at the time of boundary certification for activities with a situs in South Carolina, a person may claim remaining installments and carryforwards against State tax liability.

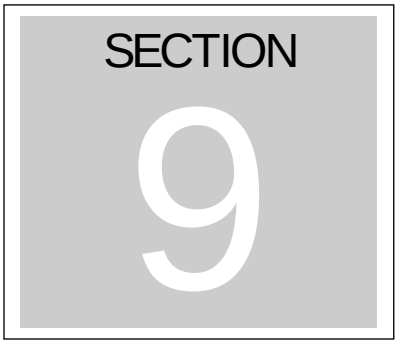
e. For land that is classified under G.S. 105-277.3 at the time of boundary certification and that fails to meet the size requirements of G.S. 105-277.3 solely because of boundary certification, (i) no deferred taxes are due as a result of boundary certification, (ii) the deferred taxes remain a lien on the land located in this State, and (iii) the deferred taxes for the land in this State are otherwise payable in accordance with G.S. 105-277.3. The tax benefit provided in this sub-subdivision is forfeited if any portion of the land located in this State is sold.

f. For land receiving a property tax benefit other than classification under G.S. 105-277.3 at the time of boundary certification that fails to meet the requirements for the property tax benefit solely because of boundary certification, the land is not entitled to receive the property tax benefit after the time of boundary certification unless it meets the statutory requirements, but the lien on the land for the deferred taxes is extinguished as if it has been paid in full.

(3) A person may not seek a refund for activities occurring prior to the date of certification where the basis of the refund is the certification.

(Effective June 22, 2016; SB 575, s. 1-12, S.L. 2016-23.)

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 January 1, 2015 to January 1, 2016. Notwithstanding the effective date, any amendments to the Internal Revenue Code enacted after January 1, 2015 that increase North Carolina taxable income for the 2015 taxable year become effective for the tax year 2016.

(Effective June 1, 2016; SB 726, s. 1, S.L. 16-6.)

G.S. 105-236(a)(10) – Penalties for Failure to File Information Returns: The 2015 General Assembly amended subparagraph c of G.S. 105-236(a)(10) to make the penalty for failure to file an information return with the Secretary apply to an information return due under Article 4A (withholding tax). 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. Note: The Secretary has elected to grant an automatic waiver of the penalty for any Form NC-3, Annual Withholding Reconciliation, due in calendar year 2017.)

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. 105-237.1(a)(7) – Compromise of Liability: This statute provides the authority by which the Secretary is authorized to compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State. As amended, the law permits the Secretary to compromise a taxpayer's liability if the assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in definition of retailer or the sales tax base expansion to (i) service contracts, (ii) repair, maintenance, and installation services, or (iii) sales transactions for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022.

(Effective July 14, 2016; HB 1030, s. 38.5(b), S.L. 16-94.)

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 provide a limited-time exception to the general statute of limitations for requesting a refund of corporate or individual income tax resulting from the deduction on the North Carolina return of income included in federal income because of the acceleration of the reporting of deferred income from the discharge of indebtedness. To be eligible for the limited-time exception, the corporation or individual had to file a claim for refund with the Department by July 1, 2016 for those tax years that were otherwise barred by statute.

Subsection (b) of this section was also amended by adding a new subdivision (6) to extend the time period to file a request for a refund of an overpayment resulting from the exclusion of income from wrongful incarceration. If the exclusion of income applies to a tax year that would be barred by the general statute of limitations for requesting a refund, the refund may be allowed if the claim for refund is filed by December 18, 2016

For further information about the two limited-time exceptions, see ***"Important Notice: Limited-Time Extension of the Statute of Limitations With Respect to Refunds of Corporate and Individual Income Tax Paid,"*** published by the Department on June 3, 2016, at www.dornc.com/taxes/individual/impnotice060316_limitedtimeextension.pdf.

(Exception related to the cancelation of debt effective May 11, 2016 for requests for refunds made to the Secretary of Revenue on or before July 1, 2016; SB 729, s. 6.1, S.L. 16-5; exception related to wrongful incarceration effective June 1, 2016 and expires December 19, 2016; SB 726, s. 5, S.L. 16-6.)

G.S. 105-241.7(c1) and G.S. 105-241.15 - Refund and Appeals Process: Session Law 2016-76 revised two statutes within Article 9 of Chapter 105 to provide a procedure for taxpayers to seek a review of the Department's determination that a taxpayer's amended return or claim for refund was filed outside the statute of limitations for requesting a refund.

Before the new law, a taxpayer that requested a refund of an overpayment outside the statute of limitations, as determined by the Department, was not entitled to the refund and was not entitled to further administrative or judicial review of the Department's statute of limitations determination. Under the new law, when the Department determines that a taxpayer has filed an amended return or claim for refund outside the statute of limitations for requesting a refund, the Department is required to deny the taxpayer's refund request and send the taxpayer a notice of denied refund. A taxpayer whose refund request is denied because the amended return or claim for refund is determined by the Department to be filed outside the statute of limitations may appeal the Department's determination by filing a petition with the Office of Administrative Hearings. The new statutes are identified below:

Subsection (c1) of G.S. 105-241.7 was added to require the Department to deny a taxpayer's refund request if the Department determines the taxpayer's amended return or claim for refund was filed outside the statute of limitations, and send the taxpayer a notice of denied refund.

Subsection (b) of G.S. 105-241.15 was added to permit a taxpayer to file a petition for a contested case hearing before an administrative law judge at the Office of Administrative Hearings pursuant to Article 3 of Chapter 150B of the General Statues. This new subsection permits a taxpayer to seek judicial review of the Department's determination that the statute of limitations bars a refund claim. The sole issue to be decided by the administrative law judge in a contested tax case based on the Department's statute of limitations determination is whether or not the statute of limitations bars the taxpayer's claim for refund of an overpayment.

The law provides that the final decision by the administrative law judge regarding the statute of limitations is subject to further judicial review under Article 4 of Chapter 150B of the General Statutes and under G.S. 105-241.16. If further judicial review is not sought and the administrative law judge decides that the taxpayer's refund request was not barred by the statute of limitations, the administrative law judge must remand the matter back to the Department for further consideration of the substantive issues. If further judicial review is sought and it is finally determined that the taxpayer's refund request was not barred by the statute of limitations, then the refund request is remanded to the Department for Departmental review of the substantive issues. Any remand is regarded as a new amended return or claim for refund timely filed within the statute of limitations under G.S. 105-241.7(c).

Uncodified language was adopted to allow a taxpayer that, prior to June 30, 2016, received a notification from the Department that an amended return or claim for refund was not filed within the statute of limitations and could not be processed by the Department to contest the Department's determination by filing a petition for a contested tax case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes by August 29, 2016.

For further information, see ***"Important Notice: A Taxpayer May Contest the Department's Determination That an Amended Return or Claim for Refund Was Not Filed Within the Statute of Limitations,"*** published by the Department on June 13, 2016, at http://www.dornc.com/taxes/impnotice_statuteoflimitations_071316.pdf.

(Effective June 30, 2016; HB 533, s. 2(a)(b) and (c), S.L. 16-76.)

G.S. 105-242.2(e) – Responsible Person Statute of Limitations: Under prior law, the period of limitations for assessing a responsible person for unpaid taxes under G.S. 105-242.2 expired one year after the expiration of the period of limitations for assessing the business entity. This subsection was amended to provide that the period of limitations for assessing a responsible person for unpaid taxes under the statute expires the later of one year after the expiration of the period of limitations for assessing the business entity, or one year after a tax becomes collectible from the business entity under G.S. 105-241.22(3), which allows the collection of taxes when a taxpayer and the Department agree on a settlement concerning the amount of tax due, (4), which allows the collection of taxes when the Department sends a notice of final determination concerning an assessment of tax and the taxpayer does not file a timely petition for a contested case hearing on the assessment, (5), which allows the collection of taxes when a final decision is issued on a proposed assessment of tax after a contested case hearing, or (6), which allows the collection of taxes when the Office of Administrative Hearings dismisses a petition for a contested case for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.

(Effective ~~June 1, 2016~~ May 11,2016; and applies to a tax that becomes collectible from the business entity under G.S. 105-241.22(3), (4), (5), or (6) on or after ~~June 1, 2016~~; May 11,2016; SB 729, s. 5.1(a), S.L. 16-5.)

G.S. 105-251.2 – Compliance Information Requests: The 2015 General Assembly added this 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. 105-254.1 – Identification of Veterans on Individual Income Tax Return, Form D-400: This section was enacted to require the Secretary of Revenue to annually compile information about the number of veterans filing individual income tax returns in

North Carolina and to provide this information to the Department of Military and Veterans Affairs. Subsection (a) requires the Secretary to provide adequate space and instructions on the individual income tax return, Form, D-400, for an individual to voluntarily indicate whether or not the individual is a veteran and, if filing a joint return, whether or not the individual's spouse is a veteran. Subsection (b) requires the Secretary to compile on an aggregate basis the number of veterans filing tax returns in this State and to annually report that information to the Department of Military and Veterans Affairs no later than January 15 of each year. Information specific to individual employers or employees shall remain confidential to the extent required by G.S. 105-259. Subsection (c) provides that the term "veteran" has the same meaning as in G.S. 143B-1213(3)b. That statute defines a veteran as "for entitlement to the services of the Department of Military and Veterans Affairs, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the Armed Forces of the United States."

The update to the individual income tax return is required for tax years beginning on or after January 1, 2016. The first report by the Department is due January 15, 2018.

(Effective July 26, 2016; SB 105, ss. 1 & 2, S.L. 16-112.)

G.S. 105-259(b)(27) – Exception to Prohibition of Disclosure: The amendment to this subdivision, along with the enactment of new G.S. 105-264.2, allows the Department to disclose certain tax information in the text of a "written determination" on its website. As amended and as specifically defined in G.S. 105-264.2, a "written determination" is an alternative apportionment ruling, a private letter ruling, or a redetermination private letter ruling.

(Effective July 22, 2016; SB 481, s. 7, S.L. 16-103.)

G.S. 105-259(b)(40) – Disclosure to Nonparticipating Manufacturer: This subdivision is rewritten to clarify that the allowable disclosure to a nonparticipating manufacturer includes the amount of the manufacturer's product sold in North Carolina by distributor.

(Effective May 11, 2016; SB 729, s. 4.5(a), S.L. 16-5.)

G.S. 105-259(b)(50) – Disclosure of Tobacco and Other Tobacco Product Licensees: This subdivision was added to permit the Department to provide public access to a list of names and account numbers of tobacco and other tobacco product licensees to aid in the administration of the Tobacco Tax Act.

(Effective May 11, 2016; SB 729, s. 4.5(a), S.L. 16-5.)

G.S. 105-259(b)(51) – Disclosure to Other IFTA Jurisdictions: This subdivision was added to permit the Department to exchange information regarding the tax imposed on

motor carriers with other jurisdictions administering the International Fuel Tax Agreement to aid in the administration of the Agreement.

(Effective May 11, 2016; SB 729, s. 4.5(a), S.L. 16-5.)

G.S. 105-259(b)(52) – Exception to Prohibition of Disclosure: This subdivision was added to permit the Department to furnish tax information to the State Education Assistance Authority as necessary for administering the coordinated and centralized residency determination process in accordance with Article 14 of Chapter 116 of the General Statutes. The purpose of the coordinated and centralized residency determination process is to ensure that an individual seeking the in-State tuition rate at any of the constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges qualifies for the in-State tuition rate.

(Effective September 1, 2016, and applies to all undergraduate enrollments for academic quarters, terms, or semesters that begin on or after January 1, 2017, and to all graduate enrollments for academic quarters, terms, or semesters that begin on or after January 1, 2018; SB 536, s. 2.(f), S.L. 16-57.)

G.S. 105-264(d) – Fee for Secretary's Interpretation of Revenue Laws: The amendment to this subsection, along with the enactment of new G.S. 105-264.2, allows the Department to charge a fee for providing a "written determination" to a taxpayer (previously, a fee for providing "specific written advice" to a taxpayer). As amended and as specifically defined in G.S. 105-264.2, a "written determination" is an alternative apportionment ruling, a private letter ruling, or a redetermination private letter ruling.

(Effective July 22, 2016; SB 481, s. 6, S.L. 16-103.)

G.S. 105-264.2 – Publication of Written Determinations: This new section was added to require the Department to publish on its website redacted versions of written determinations. Under the new law, a written determination is defined as any one or more of the following:

a. An alternative apportionment ruling.
b. A private letter ruling.
c. A redetermination private letter ruling.

A written determination applies the law to a specific set of facts furnished by a particular taxpayer, and because such a determination is applicable only to the individual taxpayer addressed, it has no precedential value except to the taxpayer to whom the determination is issued. The law requires the Department to publish the specific guidance given to a taxpayer on its website within 90 days of the date the determination is provided to the taxpayer. Confidential information and identifying details of the taxpayer or other named parties in the document must be redacted before the guidance is published. The Department determines the appropriate extent of the redactions and

is not liable for failure to make redactions unless the Department fails to make the redactions in intentional and willful disregard of the law, has agreed to redact the information, or has been ordered by the court to make the redaction.

Uncodified language was adopted to require the Department to publish on its website on or before November 19, 2016, the text of any written determination issued on or after January 1, 2010, and before July 22, 2016. The text of the written determination must be redacted to remove any identifying taxpayer information, as determined by the Department, before being published on the Department's website.

(Effective July 22, 2016; SB 481, s. 5, S.L. 16-103.)