

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-22
SENATE BILL 1327

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, TO ADJUST THE CITIES' DISTRIBUTION OF THE TAX PROCEEDS UNTIL JUNE 30, 2000, TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO DETERMINE THE IMPACT OF THE TAX ON THE DISTRIBUTION TO CITIES, AND TO DIRECT THE UTILITIES COMMISSION TO STUDY THE ISSUE OF TRANSPORTATION RATES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5E.
"Piped Natural Gas Tax.

"§ 105-187.40. Definitions.

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

- (1) Gas city. – A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.
- (2) Local distribution company. – A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.
- (3) Premises. – Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.
- (4) Sales customer. – An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.
- (5) Transportation customer. – An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"§ 105-187.41. Tax imposed on piped natural gas.

(a) Scope. – An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. – The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

<u>Monthly Volume of Therms Received</u>	<u>Rate Per Therm</u>
<u>First 200</u>	<u>\$.047</u>
<u>201 to 15,000</u>	<u>.035</u>
<u>15,001 to 60,000</u>	<u>.024</u>
<u>60,001 to 500,000</u>	<u>.015</u>
<u>Over 500,000</u>	<u>.003</u>

(c) Gas City Exemption. – The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"§ 105-187.42. Liability for the tax.

The excise tax imposed by this section on piped natural gas is payable as follows:

- (1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.
- (2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.
- (3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"§ 105-187.43. Payment of the tax.

(a) Monthly Return. – The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. – A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.44. Distribution of part of tax proceeds to cities.

(a) City Information. – A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

- (1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.
- (2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. – The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. – The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. – A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. – The Secretary may audit a person who is required to file a return under this Article."

Section 2. G.S. 105-116 reads as rewritten:

"§ 105-116. Franchise or privilege tax on electric power, ~~natural gas, water, and sewerage companies.~~

- (a) Tax. – An annual franchise or privilege tax is imposed on the following:
- (1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.
 - (2) ~~A natural gas company engaged in the business of furnishing piped natural gas.~~
 - (2a) ~~A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.~~
 - (3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
 - (4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. ~~The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas.~~ The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. – The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. ~~An electric power company, a natural gas company, or a regional natural gas district company~~ shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A taxpayer shall submit a report on a form provided by the Secretary. The report shall include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power ~~company, a natural gas company, or a regional natural gas district, company~~ the entity's gross receipts from the sale

within each city of the commodities and services described in subsection (a).

A taxpayer ~~shall~~ must report its gross receipts on an accrual basis. If a taxpayer's report does not state the taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the taxpayer's taxable gross receipts to the city.

~~(e) Gas Special Charges. — Gross receipts of a natural gas company do not include the following:~~

~~(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.~~

~~(2) Natural gas expansion surcharges imposed under G.S. 62-158.~~

(d) Distribution. — Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. — So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. ~~If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.~~

~~(f) Gas City Exemption. — The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson."~~

Section 3. G.S. 105-116.1 reads as rewritten:

"§ 105-116.1. Distribution of gross receipts taxes to cities.

(a) Definitions. — The following definitions apply in this section:

(1) Freeze deduction. — The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. — Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power ~~company, a natural gas company, a regional natural gas district, company~~ and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power ~~companies, natural gas companies, regional natural gas districts, companies~~ and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.
- (2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.
- (3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.
- (4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.
- (2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.
- (3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.
- (4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power ~~company, a gas company, a regional natural gas district, company~~ or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private

telecommunications service as defined by G.S. ~~105-120(e)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars (\$300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwellings~~ dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein.~~ by this subdivision.

d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

- e. Sales of fuel, other than ~~electricity or piped natural gas, electricity,~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
 - f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.
- (1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars (\$80.00) per article.
- a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have

contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

- c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.
 - d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
 - e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.
 - f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
 - g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
 - h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
 - i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.
- (1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.
- (1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity and ~~and piped natural gas~~ described in this

subdivision and measured by a separate meter or another separate device:

- a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
 - b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
 - c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
- (2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.
- (3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.
- (4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas, electricity~~ or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity ~~or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.
- (4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.
- (4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.
- (5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S.

105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

- (5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. – This item is exempt because it is taxed under Article 5E of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"§ 105-164.20. Cash or accrual basis of reporting.

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report such sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such the basis of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall selected.~~ Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected. A utility must report its sales on an accrual basis. A sale by a utility of electricity, piped natural gas, electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars (\$35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of

the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."~~

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. – A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

- (1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.
- (2) One-half of the amount of tax payable during the taxable year under Article 5E of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts ~~that were derived from sales within the city and used to determine the city's distribution~~ and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 or and G.S. 105-187.44 or under former distribution under G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. – A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.

Section 14. (a) Notwithstanding G.S. 105-187.44(b), as enacted by this act, the amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the quarters in the fiscal year 1999-2000 may not exceed its benchmark amount until each city receives an amount equal to its benchmark amount. Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and the amount it would receive under G.S. 105-187.44(b) if not for the redistribution required by this section. The Secretary shall identify those cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall determine the total dollar amount of the shortfall. The Secretary shall reduce the amount to be distributed to those cities whose distribution amount under G.S. 105-187.44(b) exceeds their benchmark amount by the total dollar amount of the shortfall determined for that quarter in proportion to each city's excess. However, in no event may a city's distribution amount be reduced below its benchmark amount. The Secretary will redistribute these monies to the cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts in proportion to each city's shortfall. In any quarter that a city does not have a prior year's distribution for the corresponding quarter in fiscal year 1998-99, that city is excluded from the redistribution required under this section for that quarter. In that case, the city will receive the amount it is entitled to receive under G.S. 105-187.44(b), as enacted by this act.

For the purposes of this subsection, the term "benchmark amount" means the amount a city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding quarter during the fiscal year 1998-99.

(b) The Department of Revenue must calculate the amount a city received for taxes collected for each of the first three quarters in fiscal year 1998-99 under G.S. 105-116.1 that was attributable to piped natural gas. The Department must also calculate the amount each city would have received under G.S. 105-187.44(b), as

enacted by this act, for taxes collected for each of the first three quarters in fiscal year 1999-2000. The Department shall give this information to the Revenue Laws Study Committee. The Revenue Laws Study Committee shall study the impact of this act on the distribution of part of the proceeds of the excise tax on piped natural gas to the cities and report its findings, and any recommendation, to the 2000 Session of the 1999 General Assembly.

Section 15. The Utilities Commission shall study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer.

Section 16. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 17. Sections 1 through 12 of this act become effective July 1, 1999, and apply to piped natural gas delivered on or after that date. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 7:03 p.m. this 30th day of June, 1998