

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2012-79  
SENATE BILL 826

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES  
TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

**PART I. TECHNICAL CHANGES**

**SECTION 1.1.** G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

- ...
- (14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax ~~liability~~ liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

...."

**SECTION 1.2.** G.S. 105-134.5 reads as rewritten:

**"§ 105-134.5. (Effective for taxable years beginning on or after January 1, 2012) North Carolina taxable income defined.**

...

(b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-134.6, multiplied by a fraction the denominator of which is the taxpayer's ~~adjusted~~ gross income as modified in G.S. 105-134.6, and the numerator of which is the amount of that ~~adjusted~~ gross income, as modified, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State.

(c) Part-year Residents. – If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term "North Carolina taxable income" has the same meaning as in subsection (b) of this section except that the numerator includes ~~adjusted~~ gross income, as modified under G.S. 105-134.6, derived from all sources during the period the individual was a resident.

...."

**SECTION 1.3.** G.S. 105-134.6 reads as rewritten:

**"§ 105-134.6. (Effective for taxable years beginning on or after January 1, 2012) Modifications to adjusted gross income.**

...

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the North Carolina standard deduction amount listed in the table below for that taxpayer's filing status or the itemized deductions amount claimed under the Code. The North Carolina standard deduction amount is the lesser of the amount shown in the table below or the amount allowed under the Code. In the case of a married couple filing separate returns, a



taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars (\$600.00) in the case of an individual who is married and seven hundred fifty dollars (\$750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

<b>Filing Status</b>	<b>Standard Deduction</b>
Married, filing jointly	\$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000.

...."

**SECTION 1.4.** G.S. 105-164.13 reads as rewritten:

"§ **105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

- ...
- (11) Any of the following fuel:
    - a. Motor fuel, as ~~defined in G.S. 105-449.60, taxed in Article 36C of this Chapter,~~ except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107.
    - b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107.

- ...
- (49) Installation charges when the charges are separately stated on ~~the an~~ invoice or similar billing document given to the purchaser at the time of sale.
  - (49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the ~~purchaser-purchaser~~ purchaser at the time of sale.

...."

**SECTION 1.5.** The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

~~Manufacturing Fuel and Certain Machinery and Equipment."~~

**SECTION 1.6.** The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L. 2011-122, reads as rewritten:

"§ **105-187.70. Department comply with Article 43 of Chapter 62A of the General Statutes.**"

**SECTION 1.7.(a)** G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~ January 1, 2012, including any provisions enacted as of that date that become effective either before or after that date."

**SECTION 1.7.(b)** This section is effective when it becomes law. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become effective for taxable years beginning on or after January 1, 2012.

**SECTION 1.8.** G.S. 105-263(a) reads as rewritten:

"(a) Mailed Document. —~~Section Sections 7502 and 7503~~ of the Code ~~governs govern~~ when a return, report, payment, or any other document that is mailed to the Department is timely filed."

**SECTION 1.9.** G.S. 105-277.1F(a)(1) reads as rewritten:

"(a) Scope. – This section applies to the following deferred tax programs:

- (1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.~~ G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area."

**SECTION 1.10.** G.S. 105-468 reads as rewritten:

**"§ 105-468. Scope of use tax.**

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax was due and has been paid with respect to tangible personal property by the ~~purchaser, either purchaser~~ purchaser in another taxing county within the State, or where a local sales or use tax was due and has been paid in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

**SECTION 1.11.** G.S. 160A-536(e)(2) reads as rewritten:

"(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General Statutes, Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds."

**SECTION 1.12.(a)** G.S. 20-63 reads as rewritten:

"(b1) **(Effective until July 1, 2016)** The following special registration plates do not have to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a replacement special license plate in a standardized format in accordance with subsection (b) of this section and G.S. 20-79.4(a3).

- (1) Friends of the Great Smoky Mountains National Park.
- (2) Rocky Mountain Elk Foundation.
- (3) Blue Ridge Parkway Foundation.
- (4) Friends of the Appalachian Trail.
- (5) NC Coastal Federation.
- (6) In God We Trust.
- (7) Stock Car Racing Theme.
- (8) Buddy Pelletier Surfing Foundation.
- (9) Guilford Battleground Company.
- (10) National Wild Turkey Federation.
- (11) North Carolina Aquarium Society.
- (12) First in Forestry.

- (13) North Carolina Wildlife Habitat Foundation.
- (14) NC Trout Unlimited.
- (15) Ducks Unlimited.
- (16) Lung Cancer Research.
- (17) NC State Parks.
- (18) Support Our Troops.
- (19) US Equine Rescue League.
- (20) Fox Hunting.
- (21) Back Country Horsemen of North Carolina.
- (22) Hospice Care.
- (23) Home Care and Hospice.
- (24) NC Tennis Foundation.
- (25) AIDS Awareness.
- (26) Donate Life.
- (27) Farmland Preservation.
- (28) Travel and Tourism.
- (29) Battle of Kings Mountain.
- (30) NC Civil War.
- (31) North Carolina Zoological Society.
- (32) United States Service Academy.
- (33) Carolina Raptor Center.
- (34) Carolinas Credit Union Foundation.
- (35) North Carolina State Flag.
- (36) NC Mining.
- (37) Coastal Land Trust.
- (38) ARTS NC.
- (39) Choose Life.
- (40) North Carolina Green Industry Council.
- (41) NC Horse Council.
- (42) Core Sound Waterfowl Museum and Heritage Center.
- (43) Mountains-to-Sea Trail, Inc."

**SECTION 1.12.(b)** G.S. 20-79.7(a) reads as rewritten:

**"§ 20-79.7. Fees for special registration plates and distribution of the fees.**

(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	\$30.00
Animal Lovers	\$30.00
Arthritis Foundation	\$30.00
ARTS NC	\$30.00
Back Country Horsemen of NC	\$30.00
Boy Scouts of America	\$30.00
Brenner Children's Hospital	\$30.00
Carolina Raptor Center	\$30.00
Carolinas Credit Union Foundation	\$30.00
Carolinas Golf Association	\$30.00
Coastal Conservation Association	\$30.00
Coastal Land Trust	\$30.00
Crystal Coast	\$30.00
Daniel Stowe Botanical Garden	\$30.00
El Pueblo	\$30.00
Farmland Preservation	\$30.00
First in Forestry	\$30.00
Girl Scouts	\$30.00

Greensboro Symphony Guild	\$30.00
Historical Attraction	\$30.00
Home Care and Hospice	\$30.00
Home of American Golf	\$30.00
HOMES4NC	\$30.00
Hospice Care	\$30.00
In God We Trust	\$30.00
Maggie Valley Trout Festival	\$30.00
<u>Morgan Horse Club</u>	<u>\$30.00</u>
Mountains-to-Sea Trail	\$30.00
NC Civil War	\$30.00
NC Coastal Federation	\$30.00
NC Veterinary Medical Association	\$30.00
National Kidney Foundation	\$30.00
North Carolina 4-H Development Fund	\$30.00
North Carolina Emergency Management Association	\$30.00
North Carolina Green Industry Council	\$30.00
North Carolina Libraries	\$30.00
Outer Banks Preservation Association	\$30.00
Pamlico-Tar River Foundation	\$30.00
P.E.O. Sisterhood	\$30.00
Personalized	\$30.00
Retired Legislator	\$30.00
Ronald McDonald House	\$30.00
Share the Road	\$30.00
S.T.A.R.	\$30.00
State Attraction	\$30.00
Stock Car Racing Theme	\$30.00
Support NC Education	\$30.00
Support Our Troops	\$30.00
<u>Sustainable Fisheries</u>	<u>\$30.00</u>
Toastmasters Club	\$30.00
Topsail Island Shoreline Protection	\$30.00
Travel and Tourism	\$30.00
AIDS Awareness	\$25.00
Buffalo Soldiers	\$25.00
Choose Life	\$25.00
Collegiate Insignia	\$25.00
First in Turf	\$25.00
Goodness Grows	\$25.00
High School Insignia	\$25.00
Kids First	\$25.00
National Multiple Sclerosis Society	\$25.00
National Wild Turkey Federation	\$25.00
NC Agribusiness	\$25.00
NC Children's Promise	\$25.00
Nurses	\$25.00
Olympic Games	\$25.00
Rocky Mountain Elk Foundation	\$25.00
Special Olympics	\$25.00
Support Soccer	\$25.00
Surveyor Plate	\$25.00
The V Foundation for Cancer Research Division	\$25.00
University Health Systems of Eastern Carolina	\$25.00
Alpha Phi Alpha Fraternity	\$20.00
ALS Association, Jim "Catfish" Hunter Chapter	\$20.00
ARC of North Carolina	\$20.00
Audubon North Carolina	\$20.00
Autism Society of North Carolina	\$20.00

Battle of Kings Mountain	\$20.00
Be Active NC	\$20.00
Brain Injury Awareness	\$20.00
Breast Cancer Earlier Detection	\$20.00
Buddy Pelletier Surfing Foundation	\$20.00
Concerned Bikers Association/ABATE of North Carolina	\$20.00
Daughters of the American Revolution	\$20.00
Donate Life	\$20.00
Ducks Unlimited	\$20.00
Greyhound Friends of North Carolina	\$20.00
Guilford Battleground Company	\$20.00
Harley Owners' Group	\$20.00
Jaycees	\$20.00
Juvenile Diabetes Research Foundation	\$20.00
Kappa Alpha Order	\$20.00
Litter Prevention	\$20.00
March of Dimes	\$20.00
<del>Morgan Horse Club</del>	<del>\$20.00</del>
Native American	\$20.00
NC Fisheries Association	\$20.00
NC Horse Council	\$20.00
NC Mining	\$20.00
NC Tennis Foundation	\$20.00
NC Trout Unlimited	\$20.00
NC Victim Assistance	\$20.00
NC Wildlife Federation	\$20.00
NC Wildlife Habitat Foundation	\$20.00
NC Youth Soccer Association	\$20.00
North Carolina Master Gardener	\$20.00
Omega Psi Phi Fraternity	\$20.00
Phi Beta Sigma Fraternity	\$20.00
Piedmont Airlines	\$20.00
Prince Hall Mason	\$20.00
Save the Sea Turtles	\$20.00
Scenic Rivers	\$20.00
School Technology	\$20.00
SCUBA	\$20.00
Soil and Water Conservation	\$20.00
Special Forces Association	\$20.00
Support Public Schools	\$20.00
<del>Sustainable Fisheries</del>	<del>\$20.00</del>
US Equine Rescue League	\$20.00
USO of NC	\$20.00
Wildlife Resources	\$20.00
Zeta Phi Beta Sorority	\$20.00
Carolina Regional Volleyball Association	\$15.00
Carolina's Aviation Museum	\$15.00
Leukemia & Lymphoma Society	\$15.00
Lung Cancer Research	\$15.00
NC Beekeepers	\$15.00
Shag Dancing	\$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
All Other Special Plates	\$10.00."

**SECTION 1.13.(a)** The General Assembly makes the following findings:

- (1) Section 1.3 of S.L. 2010-147 was intended to address concerns about the stringency of the environmental impact test used in determining eligibility for credits under Article 3J of Chapter 105 of the General Statutes.
- (2) The General Assembly purposefully decided to adjust that standard retroactively to January 1, 2007, the effective date of Article 3J of Chapter 105 of the General Statutes.
- (3) By retroactively changing this standard, the General Assembly intended to address instances where the application of this standard had resulted in a finding that a taxpayer was ineligible for credits contrary to the intent of the General Assembly in enacting the original legislation.
- (4) The General Assembly intended for taxpayers to receive the benefits of this retroactive change.
- (5) The provisions of G.S. 105-129.84(d) that require a taxpayer to claim a credit under Article 3J of Chapter 105 of the General Statutes within six months after the date set by statutes for the filing of return had the effect of limiting the benefits of this retroactive change.

**SECTION 1.13.(b)** Notwithstanding the provisions of G.S. 105-129.84(d), for the 2007 through 2010 taxable years, a taxpayer that satisfies all of the following conditions may claim a credit under Article 3J of Chapter 105 of the General Statutes on an amended return that is filed before January 1, 2013:

- (1) The taxpayer did not timely claim a credit under Article 3J of Chapter 105 of the General Statutes.
- (2) The taxpayer would have been ineligible to claim a credit under Article 3J of Chapter 105 of the General Statutes because it failed to meet the environmental impact standard under G.S. 105-129.83(e) prior to the enactment of S.L. 2010-147.
- (3) The taxpayer satisfies the environmental impact standard under G.S. 105-129.83(e) after the enactment of S.L. 2010-147.

**SECTION 1.13.(c)** This section is effective when it becomes law.

**SECTION 1.14.(a)** G.S. 105-122(b1) reads as rewritten:

"(b1) Definitions. – The following definitions apply in subsection (b) of this section:

- (1) Affiliate. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.
- (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.
- (3) Parent. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.
- (4) Subsidiary. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2."

**SECTION 1.14.(b)** G.S. 105-130.2 reads as rewritten:

**"§ 105-130.2. Definitions.**

The following definitions apply in this Part:

- (1) 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.
- ~~(2)~~ (3) Code. – Defined in G.S. 105-228.90.
- ~~(4a)~~ (3) Corporation. – A joint-stock company or association, an insurance company, a domestic corporation, a foreign corporation, or a limited liability company.
- ~~(4b)~~ (4) C Corporation. – A corporation that is not an S Corporation.
- ~~(4e)~~ (5) Department. – The Department of Revenue.
- ~~(2)~~ (6) Domestic corporation. – A corporation organized under the laws of this State.
- ~~(3)~~ (7) Fiscal year. – An income year, ending on the last day of any month other than December. A corporation that pursuant to the provisions of the Code has elected to compute its federal income tax liability on the basis of an annual period varying from 52 to 53 weeks shall compute its taxable income under this Part on the basis of the same period used by the corporation in computing its federal income tax liability for the income year.

- (4) (8) Foreign corporation. – Any corporation other than a domestic corporation.
- (4a)(9) Gross income. – Defined in section 61 of the Code.
- (4b)(10) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.
- (5) (11) Limited liability company. – Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Part, the term "shareholder" means a member of the limited liability company and the term "corporate officer" means a member or manager of the limited liability company.
- (12) 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.
- (5a)(13) S Corporation. – Defined in G.S. 105-131(b).
- (5b)(14) Secretary. – The Secretary of Revenue.
- (5c)(15) State net income. – The taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4.
- (16) 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.
- (5d)(17) Taxable year. – Income year.
- (6) (18) Taxpayer. – A corporation subject to the tax imposed by this Part."

**SECTION 1.14.(c)** G.S. 105-130.14 reads as rewritten:

**"§ 105-130.14. Corporations filing consolidated returns for federal income tax purposes.**

Any corporation electing or required to file a consolidated income tax return with the Internal Revenue Service must determine its State net income as if the corporation had filed a separate federal return and shall not file a consolidated or combined return with the Secretary unless one of the following applies:

- (1) The corporation is specifically directed in writing by the Secretary under ~~G.S. 105-130.6~~ G.S. 105-130.5A to file a consolidated or combined return.
- (2) ~~The corporation's facts and circumstances meet the facts and circumstances described in a permanent rule adopted under G.S. 105-130.6 and the corporation files a consolidated or combined return in accordance with that rule.~~
- (3) Pursuant to a written request from the ~~corporation,~~ corporation under G.S. 105-130.5A, the Secretary has provided written advice to the corporation stating that the Secretary will ~~require~~ allow a consolidated or combined return under the facts and circumstances set out in the request and the corporation files a consolidated or combined return in accordance with that written advice."

**SECTION 1.14.(d)** G.S. 105-262(b) is repealed.

**SECTION 1.14.(e)** G.S. 153A-279(a)(1) reads as rewritten:

- "(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:
- a. The County, a railroad, or an operating rights railroad; or



- b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. ~~105-130.6, 105-130.2,~~ or agent of: the County, a railroad, or an operating rights railroad."

**SECTION 1.14.(f)** G.S. 160A-326(a)(1) reads as rewritten:

- "(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:
  - a. The City, a railroad, or an operating rights railroad; or
  - b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. ~~105-130.6, 105-130.2,~~ or agent of: the City, a railroad, or an operating rights railroad."

**SECTION 1.14.(g)** G.S. 160A-626(a)(1) reads as rewritten:

- "(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:
  - a. The Authority, a railroad, or an operating rights railroad; or
  - b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. ~~105-130.6, 105-130.2,~~ or agent of: the Authority, a railroad, or an operating rights railroad."

## **PART II. CLARIFYING AND ADMINISTRATIVE CHANGES**

**SECTION 2.1.** G.S. 105-113.38 reads as rewritten:

### **§ 105-113.38. Bond. Bond or irrevocable letter of credit.**

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall periodically review the sufficiency of bonds required of dealers, and shall increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss. For purposes of this section, a bond may also include an irrevocable letter of credit."

**SECTION 2.2.(a)** G.S. 105-113.107(1a) reads as rewritten:

- "(1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this ~~section~~-section, or synthetic cannabinoids."

**SECTION 2.2.(b)** This section becomes effective June 1, 2011.

**SECTION 2.3.** G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~ satisfies at least one of the following conditions:

- (1) It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than fifty percent (50%) of the outstanding voting stock or voting capital interests.
- (2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests."

**SECTION 2.4.** G.S. 105-129.81(4) reads as rewritten:

- "(4) Business property. – Tangible personal property that is used in a business and capitalized by the taxpayer for tax purposes under the Code."

**SECTION 2.5.** G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife whose federal taxable income is determined on a joint federal return shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a

spouse ~~has been relieved of~~ qualifies for relief of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

**SECTION 2.6.** G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

- (1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.
- (2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.
- (3) G.S. 105-151.18. Credit for the disabled.
- (4) G.S. 105-151.24. Credit for children.
- (5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers.
- (6) Repealed by Session Laws 2004-170, s. 17, effective August 2, 2004.
- (7) G.S. 105-151.28. Credit for long-term care insurance.
- (8) **(Expires for taxable years beginning on or after January 1, 2013)**  
G.S. 105-151.30. Credit for recycling oyster shells.
- (9) G.S. 105-151.31. Earned income tax credit.
- (10) G.S. 105-151.32. Credit for adoption expenses.
- (11) G.S. 105-151.33. Education expenses credit."

**SECTION 2.7.** G.S. 105-164.3 reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...  
(25a) Over-the-counter drug. – A drug that ~~can be dispensed under federal law without a prescription and is~~ contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66 § 201.66. The label includes either of the following:

- ~~a. to have a label containing a~~ A "Drug Facts" panel
- ~~b. and a~~ A statement of its active ingredients ingredients with a list of those ingredients contained in the compound, substance, or preparation.

...  
(26b) Prepaid calling service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...  
(27a) Prepaid wireless calling service. – A right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...  
(36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance

may be conditional or in any manner or by any means. The term includes the following:

- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
- b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
- c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
- d. A lease or rental.
- e. Transfer of a digital code.

...  
(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 12, 2009~~December 19, 2011.

....  
"SECTION 2.8. G.S. 105-164.4B(a) reads as rewritten:

"(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the ~~product~~product, except as otherwise noted in this section:

- (1) ~~Over the counter.~~—When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
- (2) ~~Delivery to specified address.~~—When a purchaser or purchaser's donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the product.
- (3) ~~Delivery address unknown.~~—When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:
  - a. ~~The business or home address of the purchaser.~~
  - b. ~~The billing address of the purchaser or, if the product is prepaid wireless calling service, the location associated with the mobile telephone number.~~
  - e. ~~The address from which tangible personal property was shipped or from which a service was provided.~~
- (3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:
  - a. Address from which tangible personal property was shipped,
  - b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or
  - c. Address from which the service was provided."

SECTION 2.9. G.S. 105-164.7 reads as rewritten:

"§ 105-164.7. Retailer to collect sales tax from purchaser as trustee for State.

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax

due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

- (1) Vending machine sales.
- (2) Where a retailer displays a statement indicating the sales price includes the tax."

**SECTION 2.10.(a)** Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section:

**"§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article, the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

**SECTION 2.10.(b)** This section becomes effective August 7, 2009.

**SECTION 2.11.** G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ~~ratio of mileage ratio~~. The numerator of the mileage ratio is the number of miles the applicant operated ~~its~~ all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to period. The denominator of the mileage ratio is the number of miles ~~it~~ the applicant operated ~~them~~ all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

**SECTION 2.12.** G.S. 105-164.27A reads as rewritten:

**"§ 105-164.27A. Direct pay permit.**

(a) General. – A general direct pay permit authorizes its holder to purchase any tangible personal property, digital property, or service without paying tax to the seller and authorizes the

seller to not collect any tax on a sale to the permit holder. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on electricity.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

- (1) The place of business where the item will be ~~used~~ stored, used, or consumed is not known at the time of the purchase and a different tax consequence applies depending on where the item is used.
- (2) The manner in which the item will be ~~used~~ stored, used, or consumed is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

...  
(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases these services under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

...."

**SECTION 2.13.** G.S. 105-187.43(b) reads a rewritten:

"(b) Prepayment. – A taxpayer who is consistently liable for at least ~~ten~~ twenty thousand dollars ~~(\$10,000)~~ (\$20,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty five percent (65%) of any of the following:

- (1) The amount of tax due for the current month.
- (2) The amount of tax due for the same month in the preceding year.
- (3) The average monthly amount of tax due in the preceding calendar year."

**SECTION 2.14.** G.S. 143-59.1(a) reads as rewritten:

"(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

- (1) A vendor if the vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.
- (2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country."

**SECTION 2.15.** G.S. 105-241(b)(2a) reads as rewritten:

"(2a) Motor fuel taxes. – A taxpayer that ~~is required to file~~ files an electronic return under Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer."

**SECTION 2.16.** Effective when it becomes law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:

**"§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

- (1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars (\$26.00) for the first 15 pages plus four dollars (\$4.00) for each additional page or fraction thereof.

~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty five dollars (\$25.00) for each additional reference. For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars (\$10.00) for each additional reference.~~

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars (\$10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

....  
**SECTION 2.17.(a)** G.S. 45-102(6) reads as rewritten:

"(6) ~~The address, telephone number, and other contact information for the consumer complaint section State Home Foreclosure Prevention Project of the Housing Finance Agency, Office of Commissioner of Banks, or, alternatively, if the loan is serviced by a credit union, the address, telephone number, and other contact information for the consumer complaint section of the Credit Union Division.~~"

**SECTION 2.17.(b)** G.S. 45-103(a) reads as rewritten:

"(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. ~~The Commissioner of Banks Housing Finance Agency shall design and develop the State Home Foreclosure Prevention Project database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database.~~"

**SECTION 2.17.(c)** G.S. 45-104 reads as rewritten:

**"§ 45-104. State Home Foreclosure Prevention Project and Fund.**

(a) ~~The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the State Home Foreclosure Prevention Project is to seek solutions to avoid foreclosures for home loans. In developing the Project, the Commissioner The Project may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.~~

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Housing Finance Agency. The funds shall be held separate from any other funds received by ~~either the Office of the Commissioner of Banks or the Housing Finance Agency~~ in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. ~~The Office of the Commissioner of Banks~~ Housing Finance Agency shall collect the fee. Upon receipt of the fee the ~~Commissioner~~ Housing Finance Agency shall deposit the funds ~~into a separate account. The funds shall be transferred no less than monthly~~ into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

(d) The Housing Finance Agency shall use funds from the State Home Foreclosure Prevention Trust Fund to compensate performance-based service contracts or other contracts and grants necessary to implement the purposes of this act in the following manner:

- (1) An amount, not to exceed the greater of two million two hundred thousand dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by ~~the Office of the Commissioner of Banks and the~~ Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.
- (2) An amount, not to exceed the greater of three million four hundred thousand dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.
- (3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.
- (4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

(e) The Housing Finance Agency shall have the discretion to enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

**SECTION 2.17.(d)** G.S. 45-105 reads as rewritten:

**"§ 45-105. Extension of foreclosure process.**

~~The Commissioner of Banks upon referral from the~~ Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the ~~Commissioner~~ Housing Finance Agency reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the ~~Commissioner~~ Executive Director of the Housing Finance Agency shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the ~~Commissioner~~ Executive Director of the Housing Finance Agency makes the determination that a loan is subject to this section, the ~~Commissioner~~ Housing Finance Agency shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. ~~If the mortgage servicer is a state or federally chartered credit union, the Commissioner shall also notify the Administrator of the Credit Union Division of the determination."~~

**SECTION 2.17.(e)** G.S. 45-106 reads as rewritten:

**"§ 45-106. Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. ~~Any notice provided by the Commissioner to the Administrator of the Credit Union Division under G.S. 45-105 is not a public record.~~ Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

**SECTION 2.17.(f)** Section 5 of S.L. 2008-226 reads as rewritten:

~~"SECTION 5. The Office of the Commissioner of Banks Housing Finance Agency shall report to the General Assembly describing the operation of the program established by this act not later than May 1 of each year until the funds are completely disbursed from the reserve-State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in aggregate form and may include the number of clients helped, the effectiveness of the funds in preventing home foreclosure, recommendations for further efforts needed to reduce foreclosures, and provide any other aggregated information the Commissioner Housing Finance Agency determines is pertinent or that the General Assembly requests."~~

**SECTION 2.17.(g)** Section 6 of S.L. 2008-226, as amended by Section 9 of S.L. 2010-168, reads as rewritten:

~~"SECTION 6. Section 4 of this act becomes effective July 1, 2008. Sections 1, 2, 3, and 5 become effective November 1, 2008, and expire May 31, 2013-2008. The remainder of this act is effective when it becomes law."~~

**SECTION 2.17.(h)** This section becomes effective December 1, 2012. The North Carolina Housing Finance Agency shall assume the responsibilities designated in this section for operation of the State Home Foreclosure Prevention Project no later than December 31, 2012.

**SECTION 2.18.(a)** G.S. 105-236 reads as rewritten:

**"§ 105-236. Penalties; situs of violations; penalty disposition.**

(a) Penalties. – The following civil penalties and criminal offenses apply:

- ...
- (3) Failure to File Return. – In case of failure to file any return on the date it is due, determined with regard to any extension of time for filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, ~~or five dollars (\$5.00), whichever is the greater aggregate.~~
- (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, ~~subject to a minimum of five dollars (\$5.00).—tax.~~ This penalty does not apply in any of the following circumstances:
- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
  - b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:
    1. The date of the notice of proposed assessment of the tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
    2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment.



- c. When a taxpayer timely files a consolidated or combined return at the request of the Secretary under Part 1 of Article 4 of this Chapter and the tax due is paid within 45 days after the latest of the following:
1. The date the return is filed.
  2. The date of a notice of proposed assessment based on the return, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
  3. The date the Departmental review of the proposed assessment ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review.

...."

**SECTION 2.18.(b)** This section becomes effective January 1, 2014.

**SECTION 2.19.(a)** G.S. 121-5(e) reads as rewritten:

"(e) ~~Program Funding- Archives and Records Management Fund. – The Archives and Records Management Fund is established as a special revenue fund. The Fund consists of the fees Fees credited to the Department it~~ under G.S. 161-11.6 ~~shall~~ Chapter 161 of the General Statutes. Revenue in the Fund may be used only to offset the Department's costs in providing essential records management and archival services for public records pursuant to Chapter 121 and Chapter 132 of the General Statutes."

**SECTION 2.19.(b)** This section becomes effective July 1, 2012.

### **PART III. MOTOR VEHICLE/PROPERTY TAX CHANGES**

**SECTION 3.1.** G.S. 105-321(f) reads as rewritten:

"(f) Minimal Taxes. – Notwithstanding the provisions of G.S. 105-380, the governing body of a taxing unit that collects its own taxes may, by resolution, direct its assessor and tax collector not to collect minimal taxes charged on the tax records and receipts. Minimal taxes are the combined taxes and fees of the taxing unit and any other units for which it collects taxes, due on a tax receipt prepared pursuant to G.S. 105-320 ~~or on a tax notice prepared pursuant to G.S. 105-330.5~~, in a total original principal amount that does not exceed an amount, up to five dollars (\$5.00), set by the governing body. The amount set by the governing body should be the estimated cost to the taxing unit of billing the taxpayer for the amounts due on a tax receipt or tax notice. Upon adoption of a resolution pursuant to this subsection, the tax collector shall not bill the taxpayer for, or otherwise collect, minimal taxes but shall keep a record of all minimal taxes by receipt number and amount and shall make a report of the amount of these taxes to the governing body at the time of the settlement. These minimal taxes shall not be a lien on the taxpayer's real property and shall not be collectible under Article 26 of this Subchapter. A resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit. A resolution adopted pursuant to this subsection shall not apply to taxes on registered motor vehicles."

**SECTION 3.2.** G.S. 105-330.2 reads as rewritten:

"§ 105-330.2. (Effective July 1, 2013 – See Editor's note) **Appraisal, ownership, and situs.**

...  
 (b1) Valuation Appeal. – The owner of a classified motor vehicle may appeal the appraised value ~~or taxability~~ of the vehicle by filing a request for appeal with the assessor within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. An owner who appeals the appraised value ~~or taxability~~ of a classified motor vehicle must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value ~~and taxability~~ of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection. Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

(b2) Exemption or Exclusion Appeal. – The owner of a classified motor vehicle may appeal the vehicle's eligibility for an exemption or exclusion by filing a request for appeal with the assessor within 30 days of the assessor's initial decision on the exemption or exclusion

application filed by the owner pursuant to G.S. 105-330.3(b). Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

...."

**SECTION 3.3.** G.S. 105-330.3 reads as rewritten:

**"§ 105-330.3. (Effective July 1, 2013 – See Editor's note) Listing requirements for classified motor vehicles; application for exempt status.**

...

(a1) **Unregistered Vehicles.** – The owner of an unregistered classified motor vehicle must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. ~~If a classified motor vehicle required to be listed pursuant to this subsection is registered during the calendar before the end of the fiscal year in for which it was listed, the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle.~~ required to be listed, the following applies:

(1) The vehicle is taxed as a registered vehicle, and the tax assessed pursuant to this subsection for the fiscal year in which the vehicle was required to be listed shall be released and/or refunded.

(2) For any months for which the vehicle was not taxed between the date the registration expired and the start of the current registered vehicle tax year, the vehicle is taxed as an unregistered vehicle as follows:

a. The value of the motor vehicle is determined as of January 1 of the year in which the registration of the motor vehicle expires.

b. In computing the taxes, the assessor must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect on the date the taxes are computed.

c. The tax on the motor vehicle is the product of a fraction and the number of months for which the vehicle was not taxed between the date the registration expires and the start of the current registered vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12.

d. The taxes are due on the first day of the second month following the month the notice was prepared.

e. Interest accrues on unpaid taxes for these unregistered classified motor vehicles at the rate of five percent (5%) for the remainder of the month following the month the taxes are due. Interest accrues at the rate of three-fourths percent (3/4%) for each following month until the taxes are paid, unless the notice is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid.

(3) A vehicle required to be listed pursuant to this subsection that is not listed by January 31 and is not registered before the end of the fiscal year for which it was required to be listed is subject to discovery pursuant to G.S. 105-312. ~~G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.~~

(b) **Exemption or Exclusion.** – The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the ~~assessor, assessor~~ within 30 days of the date taxes on the vehicle are due. When an approved application is on file, the assessor must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105 282.1(a)(1). The remaining provisions of G.S. 105 282.1 do not apply to classified motor vehicles.

...."

**SECTION 3.4.** G.S. 105-330.4 reads as rewritten:

**"§ 105-330.4. (Effective July 1, 2013 – See Editor's note) Due date, interest, and enforcement remedies.**

...  
(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes and registration fees on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of five percent (5%) for the remainder of the month following the ~~date month~~ in which the registration renewal sticker expired pursuant to G.S. 20-66(g). Interest accrues at the rate of three-fourths percent (3/4%) beginning the second month following the due date and for each month thereafter until the taxes and fees are paid, unless the notice required by G.S. 105-330.5 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c).

(c) Remedies. – The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor ~~vehicle~~vehicle for which the tax year begins on or after August 1, 2013.

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

**SECTION 3.5.** G.S. 105-330.5(e) is repealed.

**SECTION 3.6.** Effective July 1, 2011, Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259, Section 22(b) of S.L. 2007-527, and Section 65 of S.L. 2008-134, reads as rewritten:

**"SECTION 13.** Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10 and 11 of this act become effective July 1, ~~2011~~2013, or when the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

**PART IV. EFFECTIVE DATE**

**SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21<sup>st</sup> day of June, 2012.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 4:30 p.m. this 26<sup>th</sup> day of June, 2012