Chapter 105.

Taxation.

SUBCHAPTER I. LEVY OF TAXES.

§ 105-1. Title and purpose of Subchapter.

The title of this Subchapter shall be "The Revenue Act." The purpose of this Subchapter shall be to raise and provide revenue for the necessary uses and purposes of the government and State of North Carolina during the next biennium and each biennium thereafter, and the provisions of this Subchapter shall be and remain in full force and effect until changed by law. It is the policy of this State that as many State taxes as possible be structured so that they are deductible for federal income tax purposes under the Internal Revenue Code. (1939, c. 158, ss. A, B; 1941, c. 50, s. 1; 1983 (Reg. Sess., 1984), c. 1097, s. 1.)

§ 105-1.1. Supremacy of State Constitution.

The State's power of taxation is vested in the General Assembly. Under Article V, Section 2(1), of the North Carolina Constitution, this power cannot be surrendered, suspended, or contracted away. In the exercise of this power, the General Assembly may amend or repeal any provision of this Subchapter in its discretion. No provision of this Subchapter constitutes a contract that the provision will remain in effect in future years, and any representation made to the contrary is of no effect. (2003-416, s. 12.)

Article 1.

Inheritance Tax.

§§ 105-2 through 105-32: Repealed by Session Laws 1998-212, s. 29A.2(a), effective January 1, 1999, and applicable to the estates of decedents dying on or after that date.

Article 1A.

Estate Taxes.

§ 105-32.1: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.2: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.3: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.4: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.5: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.6: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.7: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

§ 105-32.8: Repealed by Session Laws 2013-316, s.7(a), effective January 1, 2013, and applicable to the estates of decedents dying on or after that date.

Article 2.

Privilege Taxes.

§ 105-33. Taxes under this Article.

(a) General. – Taxes in this Article are imposed for the privilege of carrying on the business, exercising the privilege, or doing the act named.

(b) License Taxes. – A license tax imposed by this Article is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a fiscal year, begins to engage in an activity for which this Article requires a license. Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.

(c) Other Taxes. – The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.

(d) Repealed by Session Laws 1998-95, s. 2.

(e) Repealed by Session Laws 1989, c. 584, s. 1.

(f), (g) Repealed by Session Laws 1998-95, s. 2.

(h) Liability Upon Transfer. – A grantee, transferee, or purchaser of any business or property subject to the State taxes imposed in this Article must make diligent inquiry as to whether the State tax has been paid. If the business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State taxes imposed under this Article, the property, while in the possession of the innocent purchaser, is not subject to any lien for the taxes.

(i), (j) Repealed by Session Laws 1998-95, s. 2.

(k) Repealed by Session Laws 1987, c. 190. (1939, c. 158, s. 100; 1943, c. 400, s. 2; 1951, c. 643, s. 2; 1953, c. 981, s. 1; 1963, c. 294, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 1; 1981, c. 83, ss. 1, 2; 1985, c. 114, s. 10; 1985 (Reg. Sess., 1986), c. 826, ss. 1, 2; c. 934, s. 3; 1987, c. 190; 1989, c. 584, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 1; 1991 (Reg. Sess., 1992), c. 981, s. 1; 1993, c. 539, s. 688; 1994, Ex. Sess., c. 24, s. 14(c); 1996, 2nd Ex. Sess., c. 14, ss. 18, 19; 1998-95, ss. 1, 2.)

§ 105-33.1. Definitions.

The following definitions apply in this Article:

(1) City. – Defined in G.S. 105-228.90.

(1a) Code. – Defined in G.S. 105-228.90.

(2) Repealed by Session Laws 1998-95, s. 3.

(3) Person. – Defined in G.S. 105-228.90.

(4) Secretary. – Defined in G.S. 105-228.90. (1991, c. 45, s. 1; 1991 (Reg. Sess., 1992), c. 922, s. 2; 1993, c. 12, s. 3; c. 354, s. 6; 1998-95, s. 3.)

§ 105-34: Repealed by Session Laws 1979, c. 63.

§ 105-35: Repealed by Session Laws 1979, c. 72.

§§ 105-36 through 105-37: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-37.1: Repealed by Session Laws 2013-316, s. 5(a), effective January 1, 2014, and applicable to gross receipts derived from an admission charge sold at retail on or after that date.

§ 105-37.2: Repealed by Session Law 1998-96, s. 3.

§ 105-38: Repealed by Session Laws 1999-337, s. 14(b).

§ 105-38.1: Repealed by Session Laws 2013-316, s. 5(a), effective January 1, 2014, and applicable to gross receipts derived from an admission charge sold at retail on or after that date.

§ 105-39. Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 1.)

§ 105-40: Repealed by Session Laws 2013-316, s. 5(a), effective January 1, 2014, and applicable to gross receipts derived from an admission charge sold at retail on or after that date.

§ 105-41. Attorneys-at-law and other professionals.

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

(1) An attorney-at-law.

(2) **(Applicable to taxable years beginning before July 1, 2018)** A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

(2) **(Applicable to taxable years beginning on or after July 1, 2018)** A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, a massage and bodywork therapist, or another person who practices a professional art of healing.

(3) A professional engineer, as defined in G.S. 89C-3.

(4) A registered land surveyor, as defined in G.S. 89C-3.

(5) An architect.

(6) A landscape architect.

(7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.

(8) A real estate broker as defined in G.S. 93A-2. A real estate broker who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker is required to obtain only one license under this section to cover both activities.

(10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.

(11) A funeral director, an embalmer, or a funeral service licensee licensed under G.S. 90-210.25.

(12) An individual licensed under Article 9F of Chapter 143 of the General Statutes, the Home Inspector Licensure Act.

(b) The following persons are exempt from the tax:

(1) A person who is at least 75 years old.

(2) A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.

(3) A blind person engaging in a trade or profession as a sole proprietor. A "blind person" means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

(d) Repealed by Session Laws 1998-95, s. 7, effective July 1, 1999.

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or corporation. A licensed photographer having a located place of business in this State is liable for a license tax on each agent or solicitor employed by the photographer for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, the person is liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

(g) Repealed by Session Laws 1998-95, s. 7, effective July 1, 1999.

(h) Counties and cities may not levy any license tax on the business or professions taxed under this section.

(i) Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required. (1939, c. 158, s. 109; 1941, c. 50, s. 3; 1943, c. 400, s. 2; 1949, c. 683; 1953, c. 1306; 1957, c. 1064; 1973, c. 476, s. 193; 1981, c. 17; c. 83, ss. 4, 5; 1989, c. 584, s. 7; 1991 (Reg. Sess., 1992), c. 974, s. 1; 1993, c. 419, s. 13.2; 1998-95, s. 7; 2002-158, s. 3; 2005-276, s. 23A.1(b); 2008-206, s. 1; 2009-445, s. 1; 2011-330, s. 6; 2017-39, s. 9; 2017-151, s. 4; 2018-5, s. 38.2(h).)

§ 105-41.1. Repealed by Session Laws 1975, c. 619, s. 2, effective October 1, 1975.

§ 105-42: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-43. Repealed by Session Laws 1973, c. 1195, s. 8.

§ 105-44: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1228.

§§ 105-45 through 46: Repealed by Session Laws 1996, Second Extra Session, c.14, s. 17.

§ 105-47: Repealed by Session Laws 1979, c. 69.

§ 105-48: Repealed by Session Laws 1979, c. 67.

§ 105-48.1: Repealed by Session Laws 1981, c. 7.

§ 105-49: Repealed by Session Laws 1989, c. 584, s. 10.

§ 105-50: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-51: Repealed by Session Laws 1989, c. 584, s. 12.

§ 105-51.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-52: Repealed by Session Laws 1979, c. 16, s. 1.

§§ 105-53 through 105-55: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-56: Repealed by Session Laws 1981, c. 5.

§ 105-57: Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1081, s. 1.

§ 105-58: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-59: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1282, s. 44.

§§ 105-60 through 105-61: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-61.1: Repealed by Session Laws 1989, c. 584, s. 17.

§ 105-62: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-63: Repealed by Session Laws 1979, c. 65.

§ 105-64: Repealed by Session Laws 1989, c. 584, s. 19.

§ 105-64.1: Repealed by Session Laws 1989, c. 584, s. 19.

§§ 105-65 through 105-65.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s.17.

§ 105-65.2: Repealed by Session Laws 1989, c. 584, s. 19.

§ 105-66: Repealed by Session Laws 1989, c. 584, s. 19.

§ 105-66.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-67: Repealed by Session Laws 1991 (Regular Session, 1992), c. 965, s. 1.

§ 105-68: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1229.

§ 105-69: Repealed by Session Laws 1973, c. 1200, s. 1.

§ 105-70: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-71: Repealed by Session Laws 1979, c. 70.

§ 105-72: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-73. Repealed by Session Laws 1957, c. 1340, ss. 2, 9.

§ 105-74: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-75: Repealed by Session Laws 1979, 2nd Session, c. 1304, s. 1.

§ 105-75.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-76: Repealed by Session Laws 1979, c. 62.

§ 105-77: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-78: Repealed by Session Laws 1979, c. 66.

§ 105-79: Repealed by Session Laws 1979, c. 150, s. 4.

§ 105-80: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-81. Repealed by Session Laws 1947, c. 501, s. 2.

§ 105-82: Repealed by Session Laws 1989, c. 584, s. 24.

§ 105-83. Installment paper dealers.

(a) Every person engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt for which, at the time of or in connection with the execution of the instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of the obligations, shall submit to the Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making the statement, of the total face value of the obligations dealt in, bought, or discounted within the preceding three calendar months and, at the same time, shall pay a tax of two hundred seventy-seven thousandths of one percent (.277%) of the face value of these obligations.

(b) Repealed by Session Laws 1998-95, s. 9.

(c) If any person deals in, buys, or discounts any obligations described in this section without paying a tax imposed by this section, the person may not bring an action in a State court to enforce collection of an obligation dealt in, bought, or discounted during the period of noncompliance with this section until the person pays the amount of tax, penalties, and interest due.

(d) This section does not apply to corporations liable for the tax levied under G.S. 105-102.3 or to savings and loan associations.

(e) Counties and cities shall not levy any license tax on the business taxed under this section. (1939, c. 158, s. 148; 1957, c. 1340, s. 2; 1973, c. 476, s. 193; 1981, c. 83, ss. 8, 9; 1991, c. 45, s. 3; 1991 (Reg. Sess., 1992), c. 965, s. 3; 1998-95, s. 9; 1998-98, s. 1(f).)

§ 105-84: Repealed by Session Laws 1979, c. 150, s. 5.

§§ 105-85 through 105-86: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-87: Repealed by Session Laws 1981, c. 6.

§ 105-88. Loan agencies.

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars ($250.00) for each location at which the business is conducted:

(1) The business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Part 1 of Article 45 of Chapter 66 of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, the time in which the amount is to be paid, and the rate of interest and discount agreed upon.

(d) A loan made by a person who does not comply with this section is not collectible at law under G.S. 105-269.13.

(e) Repealed by Session Laws 2014-3, s. 12.3(b), effective July 1, 2015. See note for applicability. (1939, c. 158, s. 152; 1967, c. 1080; c. 1232, s. 2; 1973, c. 476, s. 193; 1991, c. 45, s. 4; 1993, c. 539, s. 695; 1994, Ex. Sess., c. 24, s. 14(c); 1998-98, s. 1(g); 1999-438, s. 2; 2000-120, s. 3; 2000-173, s. 2; 2012-46, s. 25; 2014-3, s. 12.3(b).)

§§ 105-89 through 105-90: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-90.1: Repealed by Session Laws 1989 (Regular Session, 1990), c. 814, s. 4.

§ 105-91: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-92: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1227.

§ 105-93: Repealed by Session Laws 1979, c. 68.

§ 105-94. Repealed by Session Laws 1947, c. 501, s. 2.

§ 105-95. Repealed by Session Laws 1947, c. 831, s. 2.

§ 105-96: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1231.

§§ 105-97 through 105-99: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-100: Repealed by Session Laws 1979, c. 64.

§ 105-101: Repealed by Session Laws 1979, c. 85, s. 1.

§ 105-102: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1230.

§ 105-102.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-102.2: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1213.

§ 105-102.3: Repealed by Session Laws 2015-241, s. 32.13(g), as amended by Session Laws 2015-268, s. 10.1(h), effective June 30, 2016.

§ 105-102.4: Repealed by Session Laws 1989, c. 584, s. 35.

§ 105-102.5: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17.

§ 105-102.6: Repealed by Session Laws 2015-286, s. 4.11(a), effective October 22, 2015.

§ 105-103. Unlawful to operate without license.

When a license tax is required by law, and whenever the General Assembly shall levy a license tax on any business, trade, employment, or profession, or for doing any act, it shall be unlawful for any person, firm, or corporation without a license to engage in such business, trade, employment, profession, or do the act; and when such tax is imposed it shall be lawful to grant a license for the business, trade, employment, or for doing the act; and no person, firm, or corporation shall be allowed the privilege of exercising any business, trade, employment, profession, or the doing of any act taxed in this schedule throughout the State under one license, except under a statewide license. (1939, c. 158, s. 181; 1998-98, s. 41.)

§ 105-104: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-105. Persons, firms, and corporations engaged in more than one business to pay tax on each.

Where any person, firm, or corporation is engaged in more than one business, trade, employment, or profession which is made under the provisions of this Article subject to State license taxes, such persons, firms, or corporations shall pay the license tax prescribed in this Article for each separate business, trade, employment, or profession. (1939, c. 158, s. 183.)

§ 105-106. Effect of change in name of firm.

No change in the name of a firm, partnership, or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered as commencing business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing. (1939, c. 158, s. 184.)

§ 105-107: Repealed by Session Laws 1998-95, s. 12, effective July 1, 1999.

§ 105-108. Property used in a licensed business not exempt from taxation.

A State license, issued under any of the provisions of this Article shall not be construed to exempt from other forms of taxation the property employed in such licensed business, trade, employment, or profession. (1939, c. 158, s. 186.)

§ 105-109. Obtaining license and paying tax.

(a) Repealed by Session Laws 1998-95, s. 13, effective July 1, 1999.

(b) License Required. – Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department. To obtain a license, a person must submit an application to the Department for the license and pay the required tax. An application for a license is considered a return.

The Department must issue a license to a person who files a completed application and pays the required tax. A license must be displayed conspicuously at the location of the licensed business, trade, or profession.

(c) Repealed by Session Laws 1998-212, s. 29A.14(a), effective January 1, 1999.

(d) Penalties. – The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter.

(e) Repealed by Session Laws 2014-3, s. 12.3(b), effective July 1, 2015. See note for applicability. (1939, c. 158, s. 187; 1957, c. 859; 1963, c. 294, s. 5; 1973, c. 108, s. 51; c. 476, s. 193; 1993, c. 539, ss. 698, 699; 1994, Ex. Sess., c. 24, s. 14(c); 1998-95, s. 13; 1998-212, s. 29A.14(a); 2007-491, s. 7; 2014-3, s. 12.3(b).)

§ 105-109.1. Repealed by Session Laws 1999-337, s. 16..

§ 105-110: Repealed by Session Laws 1998-212, s. 29A.14(b).

§ 105-111: Repealed by Session Laws 2001-414, s. 2.

§ 105-112: Repealed by Session Laws 1998-212, s. 29A.14(c).

§ 105-113. Repealed by Session Laws 1999-337, s. 17.

§ 105-113.1: Deleted.

Article 2A.

Tobacco Products Tax.

Part 1. General Provisions.

§ 105-113.2. Short title.

This Article may be cited as the "Tobacco Products Tax Act" or "Tobacco Products Tax Article." (1969, c. 1075, s. 2; 1991, c. 689, s. 266; 1998-98, s. 56.)

§ 105-113.3. Scope of tax; administration.

(a) Scope. – The taxes imposed by this Article shall be collected only once on the same tobacco product. Except as permitted by Article 2 of this Chapter, a city or county may not levy a privilege license tax on the sale of tobacco products.

(b) Administration. – Article 9 of this Chapter applies to this Article. (1969, c. 1075, s. 2; 1991, c. 689, s. 268; 1998-212, s. 29A.14(d).)

§ 105-113.4. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

(1b) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(1c) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

(1k) Consumable product. – Any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

(2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.

(3) Distributor. – Either of the following:

a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.

b. A manufacturer of cigarettes.

(4) Repealed by Session Laws 1991, c. 689, s. 267.

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, and is not a retail dealer.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who produces tobacco products or a person who contracts with another person to produce tobacco products and is the exclusive purchaser of the products under the contract.

(7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.

(8) Person. – Defined in G.S. 105-228.90.

(9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.

(10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(10a) Secretary. – The Secretary of Revenue.

(11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.

(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use. The term includes a vapor product.

(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.

(13a) Vapor product. – Any nonlighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(14) Wholesale dealer. – Either of the following:

a. A person who acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.

b. A manufacturer of tobacco products other than cigarettes. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 267; 1993, c. 354, s. 7; c. 442, s. 1; 2007-435, s. 2; 2009-559, s. 1; 2011-330, s. 2(a); 2014-3, s. 15.1(a).)

§ 105-113.4A. Licenses.

(a) General. – To obtain a license required by this Article, an applicant must file an application with the Secretary on a form provided by the Secretary and pay the tax due for the license. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. A license is not transferable or assignable and must be displayed at the place of business for which it is issued.

(b) Requirements. – An applicant for a license must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant for a license is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant for a license is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant for a license is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Denial. – The Secretary may investigate an applicant for a license required under this Article to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed under this Article. The Secretary may refuse to issue a license to an applicant that has done any of the following:

(1) Submitted false or misleading information on its application.

(2) Had a license issued under this Article revoked by the Secretary.

(3) Had a tobacco products license or registration issued by another state revoked.

(4) Been convicted of fraud or misrepresentation.

(5) Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.

(6) Failed to remit payment for a tax debt under this Chapter. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(7) Failed to file a return due under this Chapter.

(d) Refund. – A refund of a license tax is allowed only when the tax was collected or paid in error. No refund is allowed when a licensee surrenders a license or the Secretary revokes a license.

(e) Duplicate or Amended License. – Upon application to the Secretary, a licensee may obtain without charge a duplicate or amended license as provided in this subsection. A duplicate or amended license must state that it is a duplicate or amended license, as appropriate:

(1) A duplicate license, if the licensee establishes that the original license has been lost, destroyed, or defaced.

(2) An amended license, if the licensee establishes that the location of the place of business for which the license was issued has changed.

(f) Information on License. – The Secretary must include the following information on each license required by this Article:

(1) The legal name of the licensee.

(2) The name under which the licensee conducts business.

(3) The physical address of the place of business of the licensee.

(4) The account number assigned to the license by the Department.

(g) Records. – The Secretary must keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons that hold a current license issued under this Article, by license category.

(h) Lists. – The Secretary must provide the list required under subsection (g) of this section upon request of a manufacturer that is a licensee under this Article. The list must state the name, account number, and business address of each licensee on the list. (1991 (Reg. Sess., 1992), c. 955, s. 3; 2013-414, s. 22(a); 2017-204, s. 4.3(a).)

§ 105-113.4B. Cancellation or revocation of license.

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the licensee. The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the following acts after holding a hearing on whether the license should be revoked:

(1) Fails to obtain a license in a timely manner or for all places of business as required by this Article.

(2) Willfully fails to file a return required by this Article.

(3) Willfully fails to pay a tax when due under this Article.

(4) Makes a false statement in an application or return required under this Article.

(5) Fails to keep records as required by this Article.

(6) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.

(7) Fails to disclose the correct amount of tobacco product taxable in this State.

(8) Fails to file a replacement bond or an additional bond if required by the Secretary under this Article.

(9) Violates G.S. 14-401.18.

(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by registered mail to the last known address of the licensee.

(c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the licensee:

(1) Return an irrevocable letter of credit to the licensee.

(2) Return a bond to the licensee or notify the person liable on the bond and the licensee that the person is released from liability on the bond. (1999-333, s. 6; 2013-414, s. 22(b); 2017-204, s. 4.3(b).)

§ 105-113.4C. Enforcement of Master Settlement Agreement Provisions.

The Master Settlement Agreement between the states and the tobacco product manufacturers, incorporated by reference into the consent decree referred to in S.L. 1999-2, requires each state to diligently enforce Article 37 of Chapter 66 of the General Statutes. The Office of the Attorney General and the Secretary of Revenue shall perform the following responsibilities in enforcing Article 37:

(1) The Office of the Attorney General must give to the Secretary of Revenue a list of the nonparticipating manufacturers under the Master Settlement Agreement and the brand names of the products of the nonparticipating manufacturers.

(2) The Office of the Attorney General must update the list provided under subdivision (1) of this section when a nonparticipating manufacturer becomes a participating manufacturer, another nonparticipating manufacturer is identified, or more brands or products of nonparticipating manufacturers are identified.

(3) The Secretary of Revenue must require the taxpayers of the tobacco excise tax to identify the amount of tobacco products of nonparticipating manufacturers sold by the taxpayers, and may impose this requirement as provided in G.S. 66-290(10).

(4) The Secretary of Revenue must determine the amount of State tobacco excise taxes attributable to the products of nonparticipating manufacturers, based on the information provided by the taxpayers, and must report this information to the Office of the Attorney General. (1999-311, s. 2.)

§ 105-113.4D. Tax with respect to inventory on effective date of tax increase.

Every person subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any tobacco products must file a complete inventory of the tobacco products within 20 days after the effective date of the increase, and must pay an

additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 263; 2009-451, s. 27A.5(b).)

§ 105-113.4E. Modified risk tobacco products.

(a) Definition. – The term "modified risk tobacco product" means a tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

(b) Tax Rate Reduction. – The tax imposed under this Article is reduced by the following:

(1) Fifty percent (50%) for a modified risk tobacco product issued a risk modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(1).

(2) Twenty-five percent (25%) for a modified risk tobacco product issued an exposure modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(2).

(c) Substantiation. – Generally, tobacco products are subject to the tax imposed under this Article, unless a taxpayer substantiates that a product qualifies as a modified risk tobacco product and is subject to a reduced rate of tax in accordance with subsection (b) of this section. A taxpayer may substantiate that a product qualifies as a modified risk tobacco product by providing the Department a copy of the order issued by the United States Food and Drug Administration verifying the product as a modified risk tobacco product. Once the taxpayer provides the order to the Department, the Department must reduce the tax due as required under subsection (b) of this section effective on the first day of the next calendar month. If the order indicating a product qualifies as a modified risk tobacco product is renewed, the order renewing the product must be provided to the Department within 14 days of receipt.

If the product no longer qualifies as a modified risk tobacco product, the rate reduction under subsection (b) of this section is forfeited. A product no longer qualifies when the order qualifying the product as a modified risk tobacco product expires and is not renewed or the order is withdrawn by the United States Food and Drug Administration. The taxpayer must provide notice of such expiration or withdrawal to the Department within 14 days of receipt. Upon determination by the Department that the product no longer qualifies as a modified risk tobacco product, the Department must determine if the taxpayer paid a reduced rate after the order expired or was withdrawn. If the taxpayer did avoid taxes, the taxpayer is liable for all past taxes avoided as a result of the product no longer qualifying plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the rate reduction had not been allowed. The past taxes and interest are due 30 days after the date the rate reduction is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (2018-5, s. 38.7(a).)

Part 2. Cigarette Tax.

§ 105-113.5. Tax on cigarettes.

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of two and one-fourth cents (2.25¢) per individual cigarette. (1969, c. 1075, s. 2; c. 1246, s. 1; 1991, c. 689, s. 262; 2004-170, s. 5; 2005-276, s. 34.1(a), (b); 2009-451, s. 27A.5(a).)

§ 105-113.6. Use tax levied.

A tax is levied upon the sale or possession for sale by a person other than a distributor, and upon the use, consumption, and possession for use or consumption of cigarettes within this State at the rate set in G.S. 105-113.5. This tax does not apply, however, to cigarettes upon which the tax levied in G.S. 105-113.5 has been paid. (1969, c. 1075, s. 2; 1993, c. 442, s. 2.)

§ 105-113.7: Recodified as G.S. 105-113.4D by Session Laws 2009-451, s. 27A.5(b), effective September 1, 2009.

§ 105-113.8. Federal Constitution and statutes.

Any activities which this Article may purport to tax in violation of the Constitution of the United States or any federal statute are hereby expressly exempted from taxation under this Article. (1969, c. 1075, s. 2.)

§ 105-113.9. Out-of-state shipments.

Any distributor engaged in interstate business shall be permitted to set aside part of the stock as necessary to conduct interstate business without paying the tax otherwise required by this Part, but only if the distributor complies with the requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration of this Part.

"Interstate business" as used in this section means:

(1) The sale of cigarettes to a nonresident where the cigarettes are delivered by the distributor to the business location of the nonresident purchaser in another state; and

(2) The sale of cigarettes to a nonresident purchaser who has no place of business in North Carolina and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1977, c. 874; 1993, c. 442, s. 3; 2018-5, s. 38.6(a).)

§ 105-113.10. Manufacturers exempt from paying tax.

(a) Shipping to Other Distributors. – Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.

(b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its facilities. (1969, c. 1075, s. 2; c. 1246, s. 2; 1973, c. 476, s. 193; 1975, c. 275, s. 2; 1993, c. 442, s. 4; 2011-330, s. 2(b).)

§ 105-113.11. Licenses required.

After the effective date of this Article, no person shall engage in business as a distributor in this State, without having first obtained from the Secretary the appropriate license for that purpose as prescribed herein. Any license required by this Article shall be in addition to any and all other licenses which may be required by law. (1969, c. 1075, s. 2; 1973, c. 476, s. 193.)

§ 105-113.12. Distributor must obtain license.

(a) A distributor shall obtain for each place of business a continuing distributor's license and shall pay a tax of twenty-five dollars ($25.00) for the license.

(b) For the purposes of this section, a "place of business" is a place where a distributor receives or stores non-tax-paid cigarettes.

(c) An out-of-state distributor may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.24 and payment of a tax of twenty-five dollars ($25.00). (1969, c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 955, s. 4; 1993, c. 442, s. 5.)

§ 105-113.13. Secretary may require a bond or irrevocable letter of credit.

(a) Repealed by Session Laws 2013-414, s. 22(c), effective September 1, 2013.

(b) The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the distributor's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of the distributor and increase the required bond amount if the amount no longer covers the anticipated tax liability of the distributor and decrease the amount if the Secretary finds that a lower bond amount will protect the State adequately from loss.

For purposes of this section, a distributor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 5; 1993, c. 442, s. 6; 2013-414, s. 22(c); 2014-3, s. 9.1(a); 2016-5, s. 4.1(a).)

§§ 105-113.14 through 105-113.15: Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 6, effective July 15, 1992.

§ 105-113.16. Repealed by Session Laws 1999-333, s. 7.

§ 105-113.17. Identification of dispensers.

Each vending machine that dispenses cigarettes must be marked to identify its owner in the manner required by the Secretary. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 8.)

§ 105-113.18. Payment of tax; reports.

The taxes levied in this Part are payable when a report is required to be filed. The following reports are required to be filed with the Secretary:

(1) Distributor's Report. – A distributor shall file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the amount of tax due and shall identify any transactions to which the tax does not apply.

(1a) Report of Free Cigarettes. – A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.

(2) Use Tax Report. – Every other person who has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed by this Part shall, within 96 hours after receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report shall be accompanied by payment of the full amount of the tax.

(3) Shipping Report. – Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary.

(4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1981 (Reg. Sess., 1982), c. 1209, s. 1; 1993, c. 442, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 2.)

§§ 105-113.19 through 105-113.20: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.21. Discount; refund.

(a) Repealed by Session Laws 2003-284, s. 45A.1(a), effective for reporting periods beginning on or after August 1, 2003.

(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount

of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes. The distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes. (1969, c. 1075, s. 2; cc. 1222, 1238; 1973, c. 476, s. 193; 1993, c. 442, s. 9; 2001-414, s. 3; 2003-284, s. 45A.1(a); 2004-84, s. 2(a); 2011-330, s. 2(c).)

§§ 105-113.22 through 105-113.23: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.24. Out-of-State distributors to register and remit tax.

(a) The Secretary may authorize any distributor outside this State engaged in the business of selling and shipping cigarettes into the State to obtain a license and report and pay taxes required by this Part.

(b) A nonresident distributor must agree to submit the distributor's books, accounts, and records to reasonable examination by the Secretary or the Secretary's duly authorized agents. The Secretary may require a nonresident distributor to file a bond in accordance with G.S. 105-113.13.

(c) Each such nonresident distributor, other than a foreign corporation which has qualified with the Secretary of State as doing business in this State shall, by a duly executed instrument filed in the office of the Secretary of State, constitute and appoint the Secretary of State his lawful attorney in fact upon whom any original process in any action or legal proceeding against such nonresident distributor arising out of any matter relating to this Article may be served, and therein agree that any original process against him so served shall be of the same force and effect as if served on him within this State, and that the authority thereof shall continue in force irrevocably so long as any such nonresident distributor shall remain liable for any taxes, interest and penalties under this Article.

(d) Any nonresident distributor who shall comply with the provisions of this section may be licensed as a distributor. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 9; 1993, c. 442, ss. 9.1(a), 9.1(b).)

§ 105-113.25: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.26. Records to be kept.

Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all sales and other information as required under this Article. The records shall be in the form prescribed by the Secretary.

These records shall be safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department. The Secretary may consent to the destruction of any records at any time within this three-year period. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1993, c. 442, s. 10.)

§ 105-113.27. Non-tax-paid cigarettes.

(a) Except as otherwise provided in this Article, licensed distributors shall not sell, borrow, loan, or exchange non-tax-paid cigarettes to, from, or with other licensed distributors.

(b) No person shall sell or offer for sale non-tax-paid cigarettes.

(c) The possession of more than six hundred cigarettes on which tax has been paid to another state or country, by any person other than a licensed distributor, is prima facie evidence that the cigarettes are possessed in violation of this Part. (1969, c. 1075, s. 2; 1993, c. 442, s. 11; 1999-337, s. 18.)

§ 105-113.28: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.29. Unlicensed place of business.

It shall be unlawful for any person to maintain a place of business within this State required by this Article to be licensed to engage in the business of selling or offering for sale cigarettes or other tobacco products without first obtaining such licenses. (1969, c. 1075, s. 2; 2017-39, s. 10.)

§ 105-113.30. Records and reports.

It shall be unlawful for any person who is required under the provisions of this Article to keep records or make reports, to fail to keep such records, refuse to keep such reports, make false entries in such records, fail to produce such records for inspection by the Secretary or his duly authorized agents, fail to file a report, or make a false or fraudulent report or statement. (1969, c. 1075, s. 2; 1973, c. 476, s. 193.)

§ 105-113.31. Possession and transportation of non-tax-paid cigarettes; seizure and confiscation of vehicle or vessel.

(a) It shall be unlawful for any person to transport non-tax-paid cigarettes in violation of this Part. The Secretary may adopt rules allowing quantities of non-tax-paid cigarettes, not exceeding six hundred, to be brought into this State by a transient, a tourist, or a person returning to this State after traveling outside this State, for their own use. The possession or transportation of these cigarettes is not subject to the penalties imposed by this section.

(b) (1) Every person who transports non-tax-paid cigarettes on the public highways, roads, streets, or waterways of this State must transport with the cigarettes invoices or delivery tickets for the cigarettes showing the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported, and the true name and complete and exact address of the person who has paid or who will pay the tax imposed by this Part or the tax, if any, of the state or foreign country at the point of ultimate destination.

(2) A common carrier that has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that the

cigarettes are non-tax-paid in violation of this Part is considered to have complied with this Part and the vehicle or vessel in which the cigarettes are being transported is not subject to confiscation under this section. In the absence of the required invoices, delivery tickets, or bills of lading, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being transported, and any paraphernalia or devices used in connection with the non-tax-paid cigarettes are declared to be contraband goods and may be seized by any officer of the law, who shall take possession of the vehicle or vessel and cigarettes and shall arrest any person in charge of the vehicle or vessel and cigarettes.

(3) The officer shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction; but the vehicle or vessel shall be returned to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which bond shall be approved by the officer and shall be conditioned to return the property to the custody of the officer on the day of trial to abide the judgment of the court. All non-tax-paid cigarettes seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner.

(4) Unless the claimant can show that the non-tax-paid cigarettes seized were not transported in violation of this Part and that the property seized belongs to the claimant or that in the case of property other than cigarettes, the property was used in transporting non-tax-paid cigarettes in violation of this Part without the claimant's knowledge or consent, with the right on the part of the claimant to have a jury pass upon this claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the cost of the tax due, which the officer shall pay upon sale, expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, at the hearing or in another proceeding brought for the purpose as being bona fide and as having been created without the lien or having any notice that the vehicle or vessel was being used for the unlawful transportation of non-tax-paid cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the General Fund.

(5) All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one is found claiming the cigarettes, or the vehicle or vessel, then the taking of the cigarettes, vehicle, or vessel, along with a description, shall be advertised in a newspaper having circulation in the county where the items were taken, once a week for two weeks and by notices posted in three public places near the place of seizure, and if no claimant appears within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the State Treasurer for the General Fund.

(6) This section does not authorize an officer to search any vehicle or vessel or baggage of any person without a search warrant duly issued, except where the

officer has knowledge that there are non-tax-paid cigarettes in the vehicle or vessel. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1993, c. 442, s. 12.)

§ 105-113.32. Non-tax-paid cigarettes subject to confiscation.

All non-tax-paid cigarettes subject to the tax imposed by this Part, together with any container in which they are stored or displayed for sale (including but not limited to vending machines), are declared to be contraband goods and may be seized by any officer of the law. The officer shall arrest any person in charge of the contraband goods and shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction. The disposition of the seized cigarettes and container shall be governed by the provisions of G.S. 105-113.31. (1969, c. 1075, s. 2; 1993, c. 442, s. 13.)

§ 105-113.33. Criminal penalties.

Any person who violates any of the provisions of this Article for which no other punishment is specifically prescribed shall be guilty of a Class 1 misdemeanor. (1969, c. 1075, s. 2; 1993, c. 539, s. 700; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-113.34: Repealed by Session Laws 1993, c. 442, s. 8.

Part 3. Tax on Other Tobacco Products.

§ 105-113.35. Tax on tobacco products other than cigarettes.

(a) Tax on Tobacco Products. – An excise tax is levied on tobacco products at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. The tax rate does not apply to the following:

(1) Cigarettes subject to the tax in G.S. 105-113.5.

(2) Vapor products subject to the tax in subsection (a1) of this section.

(a1) Tax on Vapor Products. – An excise tax is levied on vapor products at the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.

(a2) Limitation. – The taxes imposed under this section do not apply to the following:

(1) A tobacco product sold outside the State.

(2) A tobacco product sold to the federal government.

(3) A sample tobacco product distributed without charge.

(b) Primary Liability. – The wholesale dealer or retail dealer who first acquires or otherwise handles tobacco products subject to the tax imposed by this section is liable for the tax imposed by this section. A wholesale dealer or retail dealer who brings into this State a tobacco product made outside the State is the first person to handle the tobacco product in this State. A wholesale dealer or retail dealer who is the original consignee of a tobacco product that is made outside the State and is shipped into the State is the first person to handle the tobacco product in this State.

(c) Secondary Liability. – A retail dealer who acquires non-tax-paid tobacco products subject to the tax imposed by this section from a wholesale dealer is liable for any tax due on the tobacco products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax.

(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco products. A manufacturer who ships vapor products to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the vapor products shipped to either a wholesale dealer or retail dealer. Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given the manufacturer permission to be relieved of paying the tax.

If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission applies to the tax imposed by this section on tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale dealer after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer.

(d1) Limitation. – Except as otherwise provided in this Article, integrated wholesale dealers may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with other integrated wholesale dealers.

(e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009. (1969, c. 1075, s. 2; 1977, c. 1114, s. 4; 1991, c. 689, s. 269; 1991 (Reg. Sess., 1992), c. 955, s. 10; 2003-284, s. 45A.1(b); 2004-84, s. 2(b); 2005-276, s. 34.1(c); 2007-323, s. 6.23(a); 2007-435, s. 3; 2009-451, s. 27A.5(c); 2009-559, s. 2; 2014-3, s. 15.1(b); 2015-6, s. 2.5(a); 2016-5, s. 4.2.)

§ 105-113.36. Wholesale dealer and retail dealer must obtain license.

A wholesale dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of twenty-five dollars ($25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of ten dollars ($10.00) for the license. A "place of business" is a place where a wholesale dealer makes tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than cigarettes. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 270; 1991 (Reg. Sess., 1992), c. 955, s. 11; 2018-5, s. 38.6(b).)

§ 105-113.37. Payment of tax.

(a) Monthly Report. – Except for tax on a designated sale under subsection (b), the taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(b) Designation of Exempt Sale. – A wholesale dealer who sells a tobacco product to a person who has notified the wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) may, when filing a monthly report under subsection (a), designate the quantity of tobacco products sold to the person for resale. A wholesale dealer shall report a designated sale on a form provided by the Secretary.

A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The wholesale dealer shall pay the tax due on all other sales in accordance with this section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the tax due on a tobacco product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of tobacco products that will be resold in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2).

A person who does not sell a tobacco product in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) after a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a tobacco product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A wholesale dealer who does not pay tax on a tobacco product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12.

(d) Shipping Report. – Any person who transports other tobacco products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 271; 1991 (Reg. Sess., 1992), c. 955, s. 12; 2009-559, s. 3; 2014-3, s. 15.1(c).)

§ 105-113.38. 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 must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the wholesale or retail dealer's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two

thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of dealers, and 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 and decrease the amount when the Secretary determines that a smaller bond amount will adequately protect the State from loss.

For purposes of this section, a wholesale dealer or a retail dealer may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section. (1969, c. 1075, s. 2; 1991, c. 689, s. 272; 2012-79, s. 2.1; 2014-3, s. 9.1(b); 2016-5, s. 4.1(b).)

§ 105-113.39. Discount; refund.

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part on tobacco products but not including vapor products, who files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part and the expense of furnishing a bond.

(b) Refund. – A wholesale dealer or retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part and is in possession of stale or otherwise unsalable tobacco products upon which the tax has been paid may return the tobacco products to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by a written certificate signed under penalty of perjury or an affidavit from the manufacturer listing the tobacco products returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the listed products. (1969, c. 1075, s. 2; 1991, c. 689, s. 273; 2001-414, s. 4; 2003-284, s. 45A.1(c); 2004-84, s. 2(c); 2005-406, s. 2; 2008-207, s. 4; 2014-3, ss. 9.2, 15.1(d).)

§ 105-113.40. Records of sales, inventories, and purchases to be kept.

Every wholesale dealer and retail dealer shall keep accurate records of the dealer's purchases, inventories, and sales of tobacco products. These records shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 274.)

§ 105-113.40A. Use of tax proceeds.

The Secretary must credit the net proceeds of the tax collected under this Part as follows:

(1) An amount equal to three percent (3%) of the cost price of the products to the General Fund.

(1a) An amount equal to the revenue generated by the tax on vapor products under G.S. 105-113.35(a1) to the General Fund.

(2) The remainder to the University Cancer Research Fund established under G.S. 116-29.1. (2009-451, s. 27A.5(d); 2010-95, s. 1; 2014-3, s. 15.1(e).)

Article 2B.

Soft Drink Tax.

§§ 105-113.41 through 105-113.67: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

Article 2C.

Alcoholic Beverage License and Excise Taxes.

Part 1. General Provisions.

§ 105-113.68. Definitions; scope.

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

(1) ABC Commission. – The North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.

(3) ABC permit. – Defined in G.S. 18B-101.

(4) Alcoholic beverage. – Defined in G.S. 18B-101.

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

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

(5) Fortified wine. – Defined in G.S. 18B-101.

(6) License. – A certificate, issued pursuant to this Article by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.

(7) Malt beverage. – Defined in G.S. 18B-101.

(8) Person. – Defined in G.S. 105-228.90.

(9) Sale. – Defined in G.S. 18B-101.

(10) Secretary. – The Secretary of Revenue.

(11) Spirituous liquor or liquor. – Defined in G.S. 18B-101.

(12) Unfortified wine. – Defined in G.S. 18B-101.

(13) Wholesaler or importer. – When used with reference to wholesalers or importers of wine or malt beverages, the term includes resident wineries that sell their wines at retail and resident breweries that produce fewer than 25,000 barrels of malt beverages per year.

(14) Wine. – Unfortified and fortified wine.

(15) Wine shipper permittee. – A winery that holds a wine shipper permit issued by the ABC Commission under G.S. 18B-1001.1.

(b) Scope. – All alcoholic beverages shall be taxed as provided in this Article regardless whether they meet all criteria of these definitions. (1971, c. 872, s. 2; 1973, c.

476, s. 193; 1975, c. 411, s. 1; 1981, c. 747, s. 2; 1985, c. 114, s. 1; c. 596, s. 3; 1993, c. 354, s. 9; c. 415, s. 26; 1995, c. 466, s. 16; 1998-95, s. 14; 1998-98, s. 58; 2003-402, s. 8; 2004-135, s. 3; 2004-170, s. 6; 2005-277, s. 2; 2005-435, s. 25(b); 2015-98, ss. 1(g), 4(b).)

§ 105-113.69. License tax; effect of license.

The taxes imposed in Part 3 of this Article are license taxes on the privilege of engaging in the activity authorized by the license. Licenses issued under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter 18B of the General Statutes and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter. (1949, c. 974, s. 6; 1951, c. 378, s. 4; 1963, c. 426, s. 12; 1971, c. 872, s. 2; 1981, c. 747, s. 3; 1985, c. 114, s. 1; 1998-95, s. 15.)

§ 105-113.70. Issuance, duration, transfer of license.

(a) Issuance, Qualifications. – Each person who receives an ABC permit shall obtain the corresponding local license, if any, under this Article. All local licenses are issued by the city or county where the establishment for which the license is sought is located. No documentation shall be required of the applicant except as provided in this section. Issuance of a local license is mandatory if the applicant holds the corresponding ABC permit and provides all of the following: (i) a copy of the most recently completed State application form for an ABC permit exclusive of any attachments, (ii) the ABC permit for visual inspection, and (iii) payment of the prescribed tax. No local license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. – All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. – A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. – A local government may not require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article. (1985, c. 114, s. 1; 1998-95, s. 16; 2017-87, s. 17.)

§ 105-113.71. Local government may refuse to issue license.

(a) Refusal to Issue. – Notwithstanding G.S. 105-113.70, the governing board of a city or county may refuse to issue a license if it finds that the applicant committed any act or permitted any activity in the preceding year that would be grounds for suspension or revocation of his permit under G.S. 18B-104. Before denying the license, the governing board shall give the applicant an opportunity to appear at a hearing before the board and to offer evidence. The applicant shall be given at least 10 days' notice of the hearing. At the conclusion of the hearing the board shall make written findings of fact based on the

evidence at the hearing. The applicant may appeal the denial of a license to the superior court for that county, if notice of appeal is given within 10 days of the denial.

(b) Local Exceptions. – The governing bodies of the following counties and cities in their discretion may decline to issue on-premises unfortified wine licenses: the counties of Alamance, Alexander, Ashe, Avery, Chatham, Clay, Duplin, Granville, Greene, Haywood, Jackson, Macon, Madison, McDowell, Montgomery, Nash, Pender, Randolph, Robeson, Sampson, Transylvania, Vance, Watauga, Wilkes, Yadkin; any city within any of those counties; and the cities of Greensboro, Aulander, Pink Hill, and Zebulon. (1985, c. 114, s. 1.)

§ 105-113.72: Repealed by Session Laws 1998-95, s. 17.

§ 105-113.73. Misdemeanor.

Except as otherwise expressly provided, violation of a provision of this Article is a Class 1 misdemeanor. (1939, c. 158, s. 525; 1971, c. 872, s. 2; 1981, c. 747, s. 32; 1985, c. 114, s. 1; 1993, c. 539, s. 701; 1994, Ex. Sess., c. 24, s. 14(c); 2003-402, s. 9.)

Part 2. State Licenses.

§ 105-113.74: Repealed by Session Laws 1998-95, s. 18.

§ 105-113.75: Repealed by Session Laws 1998-95, s. 19.

§ 105-113.76: Repealed by Session Laws 1998-95, s. 20.

Part 3. Local Licenses.

§ 105-113.77. City beer and wine retail licenses.

(a) License and Tax. – A person holding any of the following retail ABC permits for an establishment located in a city shall obtain from the city a city license for that activity. The annual tax for each license is as stated.

ABC Permit	Tax for Corresponding License
On-premises malt beverage	$15.00
Off-premises malt beverage	5.00
On-premises unfortified wine, on-premises fortified wine, or both	15.00
Off-premises unfortified wine, off-premises fortified wine, or both	10.00

(b) Tax on Additional License. – The tax stated in subsection (a) is the tax for the first license issued to a person. The tax for each additional license of the same type issued to that person for the same year is one hundred ten percent (110%) of the base license tax, that increase to apply progressively for each additional license. (1985, c. 114, s. 1.)

§ 105-113.78. County beer and wine retail licenses.

A person holding any of the following retail ABC permits for an establishment located in a county shall obtain from the county a county license for that activity. The annual tax for each license is as stated.

ABC Permit	Tax for Corresponding License
On-premises malt beverage	$25.00
Off-premises malt beverage	5.00
On-premises unfortified wine, on-premises fortified wine, or both	25.00
Off-premises unfortified wine, off-premises fortified wine, or both	25.00

(1985, c. 114, s. 1.)

§ 105-113.79. City wholesaler license.

A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than thirty-seven dollars and fifty cents ($37.50) for a city malt beverage wholesaler or a city wine wholesaler license. (1985, c. 114, s. 1; 1998-95, s. 21.)

Part 4. Excise Taxes, Distribution of Tax Revenue.

§ 105-113.80. Excise taxes on beer, wine, and liquor.

(a) Beer. – An excise tax of sixty-one and seventy-one hundredths cents (61.71¢) per gallon is levied on the sale of malt beverages.

(b) Wine. – An excise tax of twenty-six and thirty-four hundredths cents (26.34¢) per liter is levied on the sale of unfortified wine, and an excise tax of twenty-nine and thirty-four hundredths cents (29.34¢) per liter is levied on the sale of fortified wine.

(c) Liquor. – An excise tax of thirty percent (30%) is levied on spirituous liquor and antique spirituous liquor sold in ABC stores and in permitted distilleries. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's or the antique spirituous liquor seller's price plus (i) the State ABC warehouse freight and bailment charges and (ii) a markup for local ABC boards. (1985, c. 114, s. 1; 1987, c. 832, s. 2; 1998-95, s. 22; 2001-424, s. 34.23(c), (d); 2009-451, s. 27A.4(a); 2015-98, ss. 1(f), 4(c).)

§ 105-113.81. Exemptions.

(a) Major Disaster. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages or wine rendered unsalable by a major disaster. To qualify for this exemption, the wholesaler or importer shall prove to the satisfaction of the Secretary that a major disaster occurred. A major disaster is the destruction, spoilage, or rendering unsalable of 50 or more cases, or the equivalent, of malt beverages or 25 or more cases, or the equivalent, of wine.

(b) Sales to Oceangoing Vessels. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold and

delivered for use on oceangoing vessels. An oceangoing vessel is a ship that plies the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively. To qualify for this exemption the beverages shall be delivered to an officer or agent of the vessel for use on that vessel. Sales made to officers, agents, crewmen, or passengers for their personal use are not exempt.

(c) Sales to Armed Forces of the United States. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold to the Armed Forces of the United States. The Secretary may require malt beverages and wine sold to the Armed Forces of the United States to be marked "For Military Use Only" to facilitate identification of those beverages.

(d) Out-of-State Sales. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine shipped out of this State for resale outside the State.

(e) Tasting. – Resident breweries, wineries, and distilleries are not required to remit excise taxes on malt beverages, wine, or spirituous liquor given free of charge to customers, visitors, and employees on the manufacturer's licensed premises for consumption on those premises. (1963, c. 992, s. 1; 1967, c. 759, s. 24; 1971, c. 872, s. 2; 1975, c. 586, s. 3; 1985, c. 114, s. 1; 2011-183, s. 71; 2015-98, s. 4(d).)

§ 105-113.81A: Repealed by Session Laws 2009-451, s. 14.19(f), effective July 1, 2009.

§ 105-113.82. Distribution of part of beer and wine taxes.

(a) Amount. – The Secretary must distribute annually a percentage of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is authorized in the entire county or city. The percentages to be distributed are as follows:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and forty-seven hundredths percent (20.47%).

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine and forty-four hundredths percent (49.44%).

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen percent (18%).

(a1) Method. – If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city receives a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributable under subsection (a) of this section must be computed separately.

(b) Repealed by Session Laws 2000, c. 173, s. 3, effective August 2, 2000.

(c) Exception. – Notwithstanding subsections (a) and (a1) of this section, in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.

(e) Population Estimates. – To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(f) City Defined. – As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. – Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999. (1985, c. 114, s. 1; 1987, c. 836, s. 2; 1989 (Reg. Sess., 1990), c. 813, s. 5; 1991, c. 689, s. 28(b); 1993, c. 321, s. 26(g); c. 485, s. 2; 1995, c. 17, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 25.2(a); 1997-261, s. 109; 1999-458, s. 10; 2000-173, s. 3; 2002-120, s. 1; 2004-203, s. 5(d); 2005-435, s. 34(a); 2006-162, s. 1; 2007-527, s. 4; 2009-451, s. 27A.4(b); 2011-330, s. 7.)

Part 5. Administration.

§ 105-113.83. Payment of excise taxes.

(a) Liquor. – The excise tax on liquor levied under G.S. 105-113.80(c) is payable monthly by the local ABC board and by a distillery permittee to the Secretary. The tax shall be paid on or before the 15th day of the month following the month in which the tax was collected.

(b) Beer and Wine. – The excise taxes on malt beverages and wine levied under G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident wholesaler or importer who first handles the beverages in this State. The excise taxes levied under G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to G.S. 18B-1001.1 must be paid by the wine shipper permittee. The taxes on malt beverages and wine are payable only once on the same beverages. Unless otherwise provided, the tax is due on or before the 15th day of the month following the month in which the beverage is first sold or otherwise disposed of in this State by the wholesaler, importer, or wine

shipper permittee. When excise taxes are paid on wine or malt beverages, the wholesaler or importer must submit to the Secretary verified reports on forms provided by the Secretary detailing sales records for the month for which the taxes are paid. The report must indicate the amount of excise tax due, contain the information required by the Secretary, and indicate separately any transactions to which the excise tax does not apply. A wine shipper permittee shall submit verified reports once a year on forms provided by the Secretary detailing sales records for the year the taxes are paid. The verified report is due on or before the fifteenth day of the first month of the following calendar year.

(c) Railroad Sales. – Each person operating a railroad train in this State on which alcoholic beverages are sold must submit monthly reports of the amount of alcoholic beverages sold in this State and must remit the applicable excise tax due on the sale of these beverages when the report is submitted. The report is due on or before the 15th day of the month following the month in which the beverages are sold. The report must be made on a form prescribed by the Secretary. (1985, c. 114, s. 1; 1998-95, s. 23; 2003-402, s. 10; 2004-170, s. 7; 2005-435, s. 26; 2015-98, s. 4(e); 2016-5, s. 4.3.)

§ 105-113.83A. Registration and discontinuance requirements; penalties.

(a) Registration Required. – A person who holds a wine shipper permit issued under G.S. 18B-1001.1 or one or more of the following ABC permits issued under Article 11 of Chapter 18B of the General Statutes must register with the Secretary:

(1) Unfortified winery.
(2) Fortified winery.
(3) Brewery.
(4) Distillery.
(5) Wine importer.
(6) Wine wholesaler.
(7) Malt beverages importer.
(8) Malt beverages wholesaler.
(9) Nonresident malt beverage vendor.
(10) Nonresident wine vendor.
(11) Wine Producer.

(b) Registration Form. – Registration must be in a form required by the Secretary and include all information requested. If a permittee fails to register, the Secretary must notify the ABC Commission of the violation.

(c) Discontinuance of Authorized Activities. – A permittee required to be registered, who changes ownership or stops engaging in the activities authorized by an issued ABC permit, must notify the Secretary in writing of the change. The permittee is responsible for maintaining a bond or irrevocable letter of credit as required by G.S. 105-113.86 and submitting all returns and the payment of all taxes for which the permittee is liable under this Article while the issued ABC permit is active.

(d) Penalty. – The Secretary must notify the ABC Commission when a permittee required to register is not eligible to hold an ABC permit for failure to satisfy G.S. 18B-900(a)(8). Upon notification, the ABC Commission must impose any penalty permitted under G.S. 18B-104. (2018-5, s. 38.6(c).)

§ 105-113.84. Report of resident brewery, resident winery, nonresident vendor, or wine shipper permittee.

(a) A resident brewery, resident winery, and nonresident vendor must file a monthly report with the Secretary.

(b) A wine shipper permittee must file an annual report with the Secretary.

(c) The report required by this section must list the amount of beverages delivered to North Carolina wholesalers, importers, and purchasers under G.S. 18B-1001.1 during the period covered by the report. The report is due by the 15th day of the month following the period covered by the report. The report must be filed on a form approved by the Secretary and must contain the information required by the Secretary. (1985, c. 114, s. 1; 1998-95, s. 24; 2000-173, s. 4; 2003-402, s. 11; 2016-5, s. 4.12.)

§ 105-113.85. Discount.

Each wholesaler or importer who files a timely return and sends a timely payment may deduct from the amount payable a discount of two percent (2%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. (1985, c. 114, s. 1; 2000-173, s. 5; 2001-414, s. 5; 2003-284, s. 45A.2(a); 2004-84, s. 2(d).)

§ 105-113.86. Bond or irrevocable letter of credit.

(a) Wholesalers and Importers. – A wholesaler or importer must file with the Secretary a bond in an amount of not less than five thousand dollars ($5,000). The amount of the bond must be proportionate to the anticipated tax liability of the wholesaler or importer. The Secretary should periodically review the sufficiency of the bonds required under this section. The Secretary may increase the proportionate amount required, not to exceed fifty thousand dollars ($50,000), if the bond furnished no longer covers the taxpayer's anticipated tax liability. The Secretary may decrease the proportionate amount required when the Secretary determines that a smaller bond amount will adequately protect the State from loss. The bond must be conditioned on compliance with this Article, payable to the State, in a form acceptable to the Secretary, and secured by a corporate surety.

(b) Nonresident Vendors. – The Secretary may require the holder of a nonresident vendor ABC permit to furnish a bond in an amount not to exceed two thousand dollars ($2,000). The bond must be conditioned on compliance with this Article, payable to the State in a form acceptable to the Secretary, and secured by a corporate surety.

(c) Letter of Credit. – For purposes of this section, a wholesaler or importer or a nonresident vendor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section. (1985, c. 114, s. 1; 1987, c. 18; 1998-95, s. 25; 2014-3, s. 9.1(c); 2018-5, s. 38.6(d).)

§ 105-113.87. Refund for excise tax paid on sacramental wine.

(a) Refund Allowed. – A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. – An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

(c) Repealed by Session Laws 1998-212, s. 29A.14(e). (1985, c. 114, s. 1; 1998-212, s. 29A.14(e).)

§ 105-113.88. Record-keeping requirements.

A person who is required to file a report or return under this Article must keep a record of all documents used to determine information the person provides in a report or return. The records must be kept for three years from the due date of the report or return to which the records apply. (1939, c. 158, s. 520; 1945, c. 903, s. 1; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 28; 1985, c. 114, s. 1; 2000-173, s. 6.)

§ 105-113.89. Other applicable administrative provisions.

The administrative provisions of Article 9 of this Chapter apply to this Article. (1985, c. 114, s. 1; 1998-95, s. 26.)

§§ 105-113.90 through 105-113.91: Repealed by Session Laws 1985, c. 114, s. 1.

§ 105-113.92: Repealed by Session Laws 1981, c. 747, s. 25.

§ 105-113.93: Repealed by Session Laws 1985, c. 114, s. 1.

§ 105-113.94: Repealed by Session Laws 1975, c. 53, s. 3.

§§ 105-113.95 through 105-113.104: Repealed by Session Laws 1985, c. 114, s. 1.

Article 2D.

Unauthorized Substances Taxes.

§ 105-113.105. Purpose.

The purpose of this Article is to levy an excise tax to generate revenue for State and local law enforcement agencies and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 1998-98, s. 59.)

§ 105-113.106. Definitions.

The following definitions apply in this Article:

(1) Controlled Substance. – Defined in G.S. 90-87.

(2) Repealed by Session Laws 1995, c. 340, s. 1.

(3) Dealer. – Any of the following:

a. A person who actually or constructively possesses more than 42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight.

b. A person who in violation of Chapter 18B of the General Statutes possesses illicit spirituous liquor for sale.

c. A person who in violation of Chapter 18B of the General Statutes possesses mash.

d. A person who in violation of Chapter 18B of the General Statutes possesses an illicit mixed beverage for sale.

(4) Repealed by Session Laws 1995, c. 340, s. 1.

(4a) Illicit mixed beverage. – A mixed beverage, as defined in G.S. 18B-101, composed in whole or in part from spirituous liquor on which the charge imposed by G.S. 18B-804(b)(8) has not been paid, but not including a premixed cocktail served from a closed package containing only one serving.

(4b) Illicit spirituous liquor. – Spirituous liquor, as defined in G.S. 105-113.68, not authorized by the North Carolina Alcoholic Beverage Control Commission. Some examples of illicit spirituous liquor are the products known as "bootleg liquor", "moonshine", "non-tax-paid liquor", and "white liquor".

(4c) Local law enforcement agency. – A municipal police department, a county police department, or a sheriff's office.

(4d) Low-street-value drug. – Any of the following controlled substances:

a. An anabolic steroid as defined in G.S. 90-91(k).

b. A depressant described in G.S. 90-89(4), 90-90(4), 90-91(b), or 90-92(a).

c. A hallucinogenic substance described in G.S. 90-89(3) or G.S. 90-90(5).

d. A stimulant described in G.S. 90-89(5), 90-90(3), 90-91(j), 90-92(a)(3), or 90-93(a)(3).

e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-92(a)(3), or (a)(5), or 90-93(a)1.

(5) Repealed by Session Laws 1995, c. 340, s. 1.

(6) Marijuana. – All parts of the plant of the genus Cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.

(6a) Mash. – The fermentable starchy mixture from which spirituous liquor can be distilled.

(7) Person. – Defined in G.S. 105-228.90.

(8) Secretary. – Defined in G.S. 105-228.90.

(8a) State law enforcement agency. – Any State agency, force, department, or unit responsible for enforcing criminal laws.

(9) Unauthorized substance. – A controlled substance, an illicit mixed beverage, illicit spirituous liquor, or mash. (1989, c. 772, s. 1; 1993, c. 354, s. 10; 1995, c. 340, s. 1; 1997-292, s. 1; 1999-337, s. 19; 2000-119, ss. 3, 4.)

§ 105-113.107. Excise tax on unauthorized substances.

(a) Controlled Substances. – An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(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 [sub]section, or synthetic cannabinoids.

(1b) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of cocaine.

(1c) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of any low-street-value drug that is sold by weight.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(2a) At the rate of fifty dollars ($50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(3) At the rate of two hundred dollars ($200.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(a1) Weight. – A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(b) Illicit Spirituous Liquor. – An excise tax is levied on illicit spirituous liquor possessed by a dealer at the following rates:

(1) At the rate of thirty-one dollars and seventy cents ($31.70) for each gallon, or fraction thereof, of illicit spirituous liquor sold by the drink.

(2) At the rate of twelve dollars and eighty cents ($12.80) for each gallon, or fraction thereof, of illicit spirituous liquor not sold by the drink.

(c) Mash. – An excise tax is levied on mash possessed by a dealer at the rate of one dollar and twenty-eight cents ($1.28) for each gallon or fraction thereof.

(d) Illicit Mixed Beverages. – A tax is levied on illicit mixed beverages sold by a dealer at the rate of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 1998-218, s. 1; 2012-79, s. 2.2(a); 2014-3, s. 14.25.)

§ 105-113.107A. Exemptions.

(a) Authorized Possession. – The tax levied in this Article does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) Certain Marijuana Parts. – The tax levied in this Article does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.
(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.
(3) Marijuana seeds that have been sterilized and are incapable of germination.
(4) Roots of the marijuana plant. (1995, c. 340, s. 1; 1997-292, s. 1.)

§ 105-113.108. Reports; revenue stamps.

(a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the return prescribed by the Secretary. Notwithstanding any other provision of law, dealers are not required to give their name, address, social security number, or other identifying information on the return, and the return is not required to be verified by oath or affirmation. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. – Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.
(2) Seven or more grams of any other controlled substance that is sold by weight.
(3) Ten or more dosage units of any other controlled substance that is not sold by weight.
(4) Any illicit mixed beverage.
(5) Any illicit spirituous liquor.
(6) Mash. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 2000-119, s. 5; 2004-170, s. 8.)

§ 105-113.109. When tax payable.

The tax imposed by this Article is payable by any dealer who actually or constructively possesses an unauthorized substance in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the tax due on an unauthorized substance has been paid, no

additional tax is due under this Article even though the unauthorized substance may be handled by other dealers. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1.)

§ 105-113.110: Repealed by Session Laws 1995, c. 340, s. 1.

§ 105-113.110A. Administration.

Article 9 of this Chapter applies to this Article. (1989 (Reg. Sess., 1990), c. 814, s. 7; 1995, c. 340, s. 1; 1997, c. 292, s. 1; 1998-218, s. 2.)

§ 105-113.111. Assessments.

Notwithstanding any other provision of law, an assessment against a dealer who possesses an unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the jeopardy collection procedures in G.S. 105-241.23 or the general collection procedures in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter. (1989, c. 772, s. 1; 1989 (Reg. Sess., 1990), c. 1039, s. 2; 1991 (Reg. Sess., 1992), c. 900, s. 20(d); 1995, c. 340, s. 1; 1997-292, s. 1; 2007-491, s. 8.)

§ 105-113.112. Confidentiality of information.

(a) Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the provisions of G.S. 105-259.

(b) Information obtained by the Department from the taxpayer in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, may not be used as evidence, as defined in G.S. 15A-971, by a prosecutor in a criminal prosecution of the taxpayer for an offense related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance. Under this prohibition, no officer, employee, or agent of the Department may testify about this information in a criminal prosecution of the taxpayer for an offense related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance. This subsection implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor. (1989, c. 772,

s. 1; 1993, c. 539, s. 702; 1994, Ex. Sess., c. 24, s. 14(c); 1997, c. 292, s. 1; 2005-435, s. 27; 2008-134, s. 68(a); 2013-414, s. 21.)

§ 105-113.113. Use of tax proceeds.

(a) Special Account. – The Unauthorized Substances Tax Account is established as a special nonreverting account. The Secretary shall credit the proceeds of the tax levied by this Article to the Account.

(b) Distribution. – The Secretary shall distribute unencumbered tax proceeds in the Unauthorized Substances Tax Account on a quarterly or more frequent basis. Tax proceeds in the Account are unencumbered when they are collectible under G.S. 105-241.22. The Secretary shall distribute seventy-five percent (75%) of the unencumbered tax proceeds in the Account that were collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds in the Account to the General Fund.

(c) Refunds. – The refund of a tax that has already been distributed shall be drawn initially from the Unauthorized Substances Tax Account. The amount of refunded taxes that were distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that were credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account. (1991 (Reg. Sess., 1992), c. 900, s. 20(c); 1995, c. 340, s. 1; 1997-292, s. 1; 2007-491, s. 9.)

Article 3.

Franchise Tax.

§ 105-114. Nature of taxes; definitions.

(a) Repealed by Session Laws 2017-204, s. 1.1, effective August 11, 2017.

(a1) Scope. – The tax levied in this Article upon corporations is a privilege tax levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

(a2) Condition for Doing Business. – If the corporation is organized under the laws of this State, the payment of the tax levied by this Article is a condition precedent to the right to continue in the corporate form of organization. If the corporation is not organized under the laws of this State, payment of this tax is a condition precedent to the right to continue to engage in doing business in this State.

(a3) Tax Year. – The tax levied in this Article is for the income year of the corporation in which the taxes become due.

(a4) No Double Taxation. – G.S. 105-122 does not apply to holding companies taxed under G.S. 105-120.2.

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

(1) City. – Defined in G.S. 105-228.90.

(1a) Code. – Defined in G.S. 105-228.90.

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term includes a limited liability company or a partnership that elects to be taxed as a corporation under the Code, but does not otherwise include a limited liability company or a partnership.

(3) Doing business. – Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. – Defined in G.S. 105-130.2(10).

(5) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Total assets. – The sum of all cash, investments, furniture, fixtures, equipment, receivables, intangibles, and any other items of value owned by a person or a business entity.

(c) Recodified as G.S. 105-114.1 by Session Laws 2002-126, s. 30G.2(b), effective January 1, 2003. (1939, c. 158, s. 201; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1965, c. 287, s. 16; 1967, c. 286; 1969, c. 541, s. 6; 1973, c. 1287, s. 3; 1983, c. 713, s. 66; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 2; 1989, c. 36, s. 2; 1989 (Reg. Sess., 1990), c. 981, s. 2; 1991, c. 30, s. 2; c. 689, s. 250; 1991 (Reg. Sess., 1992), c. 922, s. 3; 1993, c. 12, s. 4; c. 354, s. 11; c. 485, s. 5; 1997-118, s. 4; 1998-98, ss. 60, 76; 1999-337, s. 20; 2000-173, s. 8; 2001-327, s. 2(b); 2002-126, s. 30G.2(b); 2005-435, s. 59.2(a); 2006-66, s. 24A.2(a); 2006-162, ss. 3(b), 22; 2008-107, s. 28.7(a); 2014-3, ss. 14.1, 14.26; 2015-6, s. 2.3; 2015-241, s. 32.15(a); 2016-5, s. 1.7(a); 2017-204, s. 1.1; 2018-5, s. 38.2(a).)

§ 105-114.1. Limited liability companies.

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

(1) Affiliated group. – Defined in section 1504 of the Code.

(2) Capital interest. – The right under a limited liability company's governing law to receive a percentage of the company's assets upon dissolution after payments to creditors.

(3) Entity. – A person that is not a human being.

(4) Governing law. – The law under which a limited liability company is organized.

(5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a corporation under the Code.

(b) **(Effective for taxable years beginning before January 1, 2017)** Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's capital stock, surplus, and undivided profits; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(b) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's net worth; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(c) Constructive Ownership. – Ownership of the capital interests in a noncorporate limited liability company is determined by reference to the constructive ownership rules for partnerships, estates, and trusts in section 318(a)(2)(A) and (B) of the Code with the following modifications:

(1) The term "capital interest" is substituted for "stock" each place it appears.

(2) A noncorporate limited liability company and any noncorporate entity other than a partnership, estate, or trust is treated as a partnership.

(3) The operating rule of section 318(a)(5) of the Code applies without regard to section 318(a)(5)(C).

(d) **(Effective for taxable years beginning before January 1, 2017)** No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its investment in the noncorporate limited liability company is not included in its computation of capital stock base under G.S. 105-122(b).

(d) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its investment in the noncorporate limited liability company is not included in its computation of net worth base under G.S. 105-122(b).

(e) Affiliated Group. – If the owner of the capital interests in a noncorporate limited liability company is an affiliated group of corporations, the percentage to be included pursuant to subsection (b) of this section by each group member that is doing business in this State is determined by multiplying the capital interests in the noncorporate limited liability company owned by the affiliated group by a fraction. The numerator of the fraction is the capital interests in the noncorporate limited liability company owned by the group member, and the denominator of the fraction is the capital interests in the noncorporate limited liability company owned by all group members that are doing business in this State.

(f) Exemption. – This section does not apply to assets owned by a noncorporate limited liability company if the total book value of the noncorporate limited liability company's assets never exceeded one hundred fifty thousand dollars ($150,000) during its taxable year.

(g) Timing. – Ownership of the capital interests in a noncorporate limited liability company is determined as of the last day of its taxable year. The adjustments pursuant to subsections (b) and (d) of this section must be made to the owner's next following return filed under this Article. If a noncorporate limited liability company and a corporation or an affiliated group of corporations have engaged in a pattern of transferring assets between them with the result that each did not own the capital interests on the last day of its taxable year, the ownership of the capital interests in the noncorporate limited liability company must be determined as of the last day of the corporation or group of corporations' taxable year.

(h) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this section is guilty of a Class H felony in accordance with G.S. 105-236(7). (2002-126, s. 30G.2(b); 2004-74, ss. 1, 2; 2004-170, s. 8.1; 2006-66, s. 24A.2(b); 2008-107, s. 28.7(b); 2013-157, s. 25; 2015-241, s. 32.15(e); 2016-5, s. 1.7(a).)

§ 105-115. Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 1.

§ 105-116: Repealed by Session Laws 2013-316, s. 4.1(a), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

§ 105-116.1: Repealed by Session Laws 2013-316, s. 4.1(a), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

§§ 105-117 through 115-118: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 3.

§ 105-119: Repealed by Session Laws 2000-173, s. 7.

§ 105-120: Repealed by Session Laws 2001-430, s. 12, effective January 1, 2002, and applies to taxable services reflected on bills dated on or after January 1, 2002.

§ 105-120.1: Repealed by Session Laws 2000-173, s. 7.

§ 105-120.2. Franchise or privilege tax on holding companies.

(a) **(Effective for taxable years beginning before January 1, 2017)** Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State that, at the close of its taxable year, is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. 105-122, do all of the following:

(1) File a return.

(2) Determine the total amount of its issued and outstanding capital stock, surplus and undivided profits.

(3) Apportion such outstanding capital stock, surplus and undivided profits to this State.

(a) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State that, at the close of its taxable year, is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. 105-122, do all of the following:

(1) File a return.

(2) Determine the total amount of its net worth.

(3) Apportion its net worth to this State.

(b) (1) **(Effective for taxable years beginning before January 1, 2017)** Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, a franchise or privilege tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the amount determined under subsection (a) of this section, but in no case shall the tax be more than seventy-five thousand dollars ($75,000) nor less than thirty-five dollars ($35.00).

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if the tax produced pursuant to application of this paragraph (2) exceeds the tax produced pursuant to application of subdivision (1), then the tax is levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) on the greater of the following:

a. 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 computed under G.S. 105-122(d).

b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).

(b) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Tax Rate. – Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, the greater of the following:

(1) A franchise or privilege tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the amount determined under subsection (a) of this section, but in no case shall the tax be more than one hundred fifty thousand dollars ($150,000) nor less than two hundred dollars ($200.00).

(2) If the tax calculated under this subdivision exceeds the tax calculated under subdivision (1) of this subsection, then the tax is levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) on the greater of the following:

a. 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 computed under G.S. 105-122(d).

b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).

(c) For purposes of this section, a "holding company" is a corporation that 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, voting capital interests, or ownership interests.

(d) Repealed by Session Laws 1985, c. 656, s. 39.

(e) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section. The tax imposed under the provisions of G.S. 105-122 shall not apply to businesses taxed under the provisions of this section.

(f) Repealed by Session Laws 2011-330, s. 3, effective June 27, 2011. (1975, c. 130, s. 1; 1985, c. 656, s. 39; 1985 (Reg. Sess., 1986), c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.2; 1991, c. 30, s. 4; 1998-98, s. 72; 2006-196, s. 9; 2011-330, s. 3; 2012-79, s. 2.3; 2013-414, s. 1(b); 2015-241, s. 32.15(b); 2016-5, s. 1.7(a); 2017-204, s. 1.2.)

§ 105-121: Repealed by Session Laws 1945, c. 752, s. 1.

§ 105-121.1. (Repealed effective for taxes due on or after April 1, 2017) Mutual burial associations.

An annual franchise or privilege tax on all domestic mutual burial associations shall be due and payable to the Secretary of Revenue on or before the first day of April of each year. The amount of this franchise or privilege tax shall be based on the membership of such associations according to the following schedule:

Membership less than 3,000	$15.00
Membership of 3,000 to 5,000	20.00
Membership of 5,000 to 10,000	25.00
Membership of 10,000 to 15,000	30.00

Membership of 15,000 to 20,000 ..... 35.00
Membership of 20,000 to 25,000 ..... 40.00
Membership of 25,000 to 30,000 ..... 45.00
Membership of 30,000 or more 50.00

(1943, c. 60, s. 2; 1973, c. 476, s. 193; 2016-5, s. 1.1(a).)

§ 105-122. (Effective for taxable years beginning before January 1, 2017) Franchise or privilege tax on domestic and foreign corporations.

(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

(1) Definite and accrued legal liabilities.

(1a) Billings in excess of costs that are considered a deferred liability under the percentage of completion method of revenue recognition.

(2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets and for amortization of intangible assets as permitted for income tax purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the 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 streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environmental Quality 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 the Environmental Management Commission 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 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.

(5) Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environmental Quality certifying that the Department of Environmental Quality has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environmental Quality, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) Reserves for 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.

(7) The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary, or affiliate, the debtor corporation, which is required under this subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor corporation, may deduct from the debt included a proportionate part determined on the basis of the ratio of the borrowed capital of the creditor corporation to the total assets of the creditor corporation. If the creditor corporation is also taxable under the provisions of this section, the creditor corporation is allowed to deduct from the total of its capital, surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that the debt has

been included in the tax base of the parent, subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

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

(1) Affiliate. – The same meaning as specified in G.S. 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. 105-130.2.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.2.

(c) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its capital stock, surplus, and undivided profits to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's capital stock, surplus, and undivided profits determined by applying the appropriate apportionment method is considered the amount of capital stock, surplus, and undivided profits the corporation uses in its business in this State.

(1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

(2) Alternative. – corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state

the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its capital stock, surplus, and undivided profits in accordance with the alternative method or the statutory method.

(3) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c1) of this section, which amount shall not 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 corporation 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 return is due, a franchise or privilege tax 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 provided in this section. The tax imposed in this section shall not be less than thirty-five dollars ($35.00) and is for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State. Appraised value of tangible property including real estate is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section means 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" a corporation may deduct 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 this deduction shall furnish to the Secretary a certificate from the Department of Environmental Quality 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 the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to the devices, plants or equipment, that the 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 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 is treated as deductible for the purposes of this section; the deductible liability allowed by this section applies only with respect to pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(d1) Credits. – A corporation is allowed a credit against the tax imposed by this section for a taxable year equal to one-half of the amount of tax payable during the taxable year under Article 5E of this Chapter. The credit allowed by this subsection may not exceed the amount of tax imposed by this section for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer.

(e) Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) The return and tax required by this section are in addition to all other reports required or taxes levied and assessed in this State.

(g) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11; 1995 (Reg. Sess., 1996), c. 560, s. 1; 1997-443, s. 11A.119(a); 1998-22, ss. 8, 9; 1998-98, ss. 72, 77; 1998-217, s. 43; 1999-337, s. 21; 2001-427, s. 12(a); 2003-416, s. 5(j); 2006-95, s. 1.1; 2006-162, s. 2; 2007-491, ss. 2, 10, 11; 2008-134, ss. 3(a), (b); 2009-422, s. 1; 2009-445, s. 2; 2010-31, s. 31.9(a); 2010-89, s. 2(c); 2011-145, s. 31A.2(a); 2011-330, s. 5; 2012-79, s. 1.14(a); 2013-414, ss. 1(c), 2(a); 2015-241, s. 14.30(u).)

§ 105-122. (Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later

corporate income tax return) Franchise or privilege tax on domestic and foreign corporations.

(a) Tax Imposed. – An annual franchise or privilege tax is imposed on a corporation doing business in this State for the privilege of doing business in this State and for the continuance of articles of incorporation or domestication of each corporation in this State. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

(b) Determination of Net Worth. – A corporation taxed under this section shall determine the total amount of its net worth on the basis of the books and records of the corporation as of the close of its income year. The net worth of a corporation is its total assets without regard to the deduction for accumulated depreciation, depletion, or amortization less its total liabilities, computed in accordance with generally accepted accounting principles as of the end of the corporation's taxable year. If the corporation does not maintain its books and records in accordance with generally accepted accounting principles, then its net worth is computed in accordance with the accounting method used by the entity for federal tax purposes. A corporation's net worth is subject to the following adjustments:

(1) A deduction for accumulated depreciation, depletion, and amortization as determined in accordance with the method used for federal tax purposes.

(1a) Repealed by Session Laws 2015-241, s. 32.15(d), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.

(1b) Assets for which a deduction is allowed under subdivision (1) of this subsection are valued in accordance with the method used in computing depreciation, depletion, and amortization for federal income tax purposes.

(2) An addition for indebtedness the corporation owes to a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity. The amount added back to the corporation's net worth may be further adjusted if part of the capital of the creditor is capital borrowed from a source other than a parent, a subsidiary, or an affiliate. The debtor corporation may deduct a proportionate part of the indebtedness based on the ratio of the borrowed capital of the creditor to the total assets of the creditor. For purposes of this subdivision, borrowed capital does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced by a certificate of deposit, a passbook, a cashier's check, a certified check, or other similar document.

(2a) If the creditor corporation is taxable under this Article, the creditor corporation may deduct the amount of indebtedness owed to it by a parent, subsidiary, or affiliated corporation to the extent that such indebtedness has been added by the debtor corporation.

(3) Repealed by Session Laws 2018-5, s. 38.2(b), effective beginning on or after January 1, 2019, and applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax return.

(4) through (8) Repealed by Session Laws 2015-241, s. 32.15(c), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.

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

(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) Affiliated group. – The same meaning as defined in G.S. 105-114.1.

(3) Capital interest. – The right under an entity's governing law to receive a percentage of the entity's assets upon dissolution after payments to creditors.

(4) Governing law. – The law under which the noncorporate entity is organized.

(5) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

(6) Noncorporate entity. – A person that is neither a human being nor a corporation.

(7) 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.

(8) 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.

(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its net worth to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's net worth determined by applying the appropriate apportionment method is considered the amount of net worth the corporation uses in its business in this State:

(1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it would be required to apply in apportioning its income if it were

subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's net worth attributable to the corporation's business in this State.

(2) Alternative. – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its net worth to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's net worth to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's net worth attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its net worth in accordance with the alternative method or the statutory method.

(3) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(d) Tax Base. – A corporation's tax base is the greatest of the following:

(1) The proportion of its net worth as set out in subsection (c1) of this section.

(2) Fifty-five percent (55%) of the corporation's appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State. For purposes of this subdivision, the appraised value of tangible property, including real estate, is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return.

(3) **(Effective for taxable years beginning before January 1, 2020)** The corporation's total actual investment in tangible property in this State. For purposes of this subdivision, the total actual investment in tangible property in this State is 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.

(3) **(Effective for taxable years beginning on or after January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns)** The corporation's total actual investment in tangible property in this State. For purposes of this subdivision, the total actual investment in tangible property in this State is 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 (i) reserve for depreciation as permitted for income tax purposes and (ii) any indebtedness specifically incurred and existing solely for and as the result of the purchase of any real estate and any permanent improvements made on the real estate.

(d1) Repealed by Session Laws 2015-241, s. 32.15(c), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.

(d2) **(Effective for taxable years beginning before January 1, 2019)** Tax Rate. – The tax rate is one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the corporation's tax base as determined under subsection (d) of this section. The tax imposed in this section shall not be less than two hundred dollars ($200.00).

(d2) **(Effective for taxable years beginning on or after January 1, 2019, and applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax returns)** Tax Rate. – For a C Corporation, as defined in G.S. 105-130.2, [the] tax rate is one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the corporation's tax base as determined under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars ($200.00) for the first one million dollars ($1,000,000) of the corporation's tax base as determined under subsection (d) of this section and one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of its tax base that exceeds one million dollars ($1,000,000). In no event may the tax imposed by this section be less than two hundred dollars ($200.00).

(e) Short Period. – Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) Return and Tax. – The return and tax required by this section are in addition to all other reports required or taxes levied and assessed in this State.

(g) Local Prohibition. – Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11; 1995 (Reg. Sess., 1996), c. 560, s. 1; 1997-443, s. 11A.119(a); 1998-22, ss. 8, 9; 1998-98, ss. 72, 77; 1998-217, s. 43; 1999-337, s. 21; 2001-427, s. 12(a); 2003-416, s. 5(j); 2006-95, s. 1.1; 2006-162, s. 2; 2007-491, ss. 2, 10, 11; 2008-134, ss. 3(a), (b); 2009-422,

s. 1; 2009-445, s. 2; 2010-31, s. 31.9(a); 2010-89, s. 2(c); 2011-145, s. 31A.2(a); 2011-330, s. 5; 2012-79, s. 1.14(a); 2013-414, ss. 1(c), 2(a); 2015-241, ss. 14.30(c), (u), 32.15(c), (d); 2015-268, s. 10.1(a); 2016-5, ss. 1.7(a), (b); 2017-39, s. 2; 2017-57, s. 38.6(a); 2017-204, ss. 1.3(a)-(c); 2018-5, s. 38.2(b).)

§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22(a)(23) and the annual report fee for limited liability companies under G.S. 57D-1-22. The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. (2006-66, s. 24A.2(c); 2007-323, s. 30.6(b); 2013-157, s. 26.)

§ 105-123: Repealed by Session Laws 1991, c. 30, s. 1.

§ 105-124. Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-125. Exempt corporations.

(a) Exemptions. – The following corporations are exempt from the taxes levied by this Article. Upon request of the Secretary, an exempt corporation must establish its claim for exemption in writing:

(1) A charitable, religious, fraternal, benevolent, scientific, or educational corporation not operated for profit.

(2) An insurance company subject to tax under Article 8B of this Chapter.

(3) A mutual ditch or irrigation association, a mutual or cooperative telephone association or company, a mutual canning association, a cooperative breeding association, or a similar corporation of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses.

(4) A cooperative marketing association that operates solely for the purpose of marketing the products of members or other farmers and returns to the members and farmers the proceeds of sales, less the association's necessary operating expenses, including interest and dividends on capital stock, on the basis of the quantity of product furnished by them. The association's operations may include activities directly related to these marketing activities.

(5) A production credit association organized under the federal Farm Credit Act of 1933.

(6) A club organized and operated exclusively for pleasure, recreation, or other nonprofit purposes, a civic league operated exclusively for the promotion of social welfare, a business league, or a board of trade.

(7) A chamber of commerce or merchants' association not organized for profit, no part of the net earnings of which inures to the benefit of a private stockholder, an individual, or another corporation.

(8) An organization, such as a condominium association, a homeowners' association, or a cooperative housing corporation not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation. To qualify for the exemption, the organization must be operated exclusively for the management, operation, preservation, maintenance, or landscaping of the residential units owned by the organization or its members or of the common areas and facilities that are contiguous to the residential units and owned by the organization or by its members. To qualify for the exemption, no part of the net earnings of the organization may inure, other than through the performance of related services for the members of the organization, to the benefit of any person.

(9) Except as otherwise provided by law, an organization exempt from federal income tax under the Code.

Provided, that an entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from all of the taxes levied in this Article. Upon request by the Secretary of Revenue, a real estate mortgage investment conduit must establish in writing its qualification for this exemption.

(b) **(Effective for taxable years beginning before January 1, 2017)** Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its capital stock, surplus, and undivided profits base for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

(1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

(2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12.

(b) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its net worth base for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

(1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

(2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12. (1939, c. 158, s. 213; 1951, c. 937, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 3; 1963, c. 601, s. 3; c. 1169, s. 1; 1967, c. 1110, s. 2; 1971, c. 820, s. 3; c. 833, s. 1; 1973, c. 476, s. 193; c. 1053, s. 2; c. 1287, s. 3; 1975, c. 591, s. 1; 1983,

c. 28, s. 2; c. 713, s. 67; 1985 (Reg. Sess., 1986), c. 826, s. 4; 1991, c. 30, s. 6; 1993, c. 485, s. 4; c. 494, s. 1; 2008-107, s. 28.7(c); 2011-330, s. 8; 2015-241, s. 32.15(f); 2016-5, s. 1.7(a).)

§ 105-126. Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-127. When franchise or privilege taxes payable.

(a) Every corporation, domestic or foreign, that is required to file a return with the Secretary shall, unless otherwise provided, pay annually the franchise tax as required by G.S. 105-122.

(b) Repealed by Session Laws 1998-98, s. 78, effective August 14, 1998.

(c) It shall be the duty of the treasurer or other officer having charge of any such corporation, domestic or foreign, upon which a tax is herein imposed, to transmit the amount of the tax due to the Secretary of Revenue within the time provided by law for payment of same.

(d), (e) Repealed by Session Laws 2002-72, s. 11, effective August 12, 2002.

(f) After the end of the income year in which a domestic corporation is dissolved pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the corporation has engaged in business activities in this State not appropriate to winding up and liquidating its business and affairs. (1939, c. 158, s. 215; 1973, c. 476, s. 193; 1991, c. 30, s. 7; 1993, c. 485, s. 6; 1998-98, s. 78; 2002-72, s. 11; 2011-330, s. 9; 2013-414, s. 1(d).)

§ 105-128. Power of attorney.

The Secretary of Revenue shall have the authority to require a proper power of attorney of each and every agent for any taxpayer under this Article. (1939, c. 158, s. 217; 1973, c. 476, s. 193.)

§ 105-129. Extension of time for filing returns.

A return required by this Article is due on or before the date set in this Article. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263. (1939, c. 158, s. 216; 1955, c. 1350, s. 17; 1959, c. 1259, s. 9; 1973, c. 476, s. 193; 1977, c. 1114, s. 6; 1989 (Reg. Sess., 1990), c. 984, s. 7; 1997-300, s. 2.)

§ 105-129.1: Repealed by Session Laws 1989, c. 582, s. 1.

Article 3A.

Tax Incentives For New And Expanding Businesses.

§§ 105-129.2 through 105-129.13: Repealed effective for business activities occurring on or after January 1, 2007.

§ 105-129.14: Reserved for future codification purposes.

Article 3B.

Business And Energy Tax Credits.

§ 105-129.15. Definitions.

The following definitions apply in this Article:

(1) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(2) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code.

(3) Recodified as § 105-129.15(5).

(4) Hydroelectric generator. – A machine that produces electricity by water power or by the friction of water or steam.

(4a) Repealed by Session Laws 2002-87, s. 3, effective August 22, 2002.

(4b) Installation of renewable energy property. – Renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.

(5) Purchase. – Defined in section 179 of the Code.

(6) Renewable biomass resources. – Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes.

(7) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Combined heat and power system property. – Defined in section 48 of the Code.

c. Geothermal equipment that meets either of the following descriptions:
   1. It is a heat pump that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.
   2. It uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling.

d. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

e. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

f. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid.

(8) Renewable fuel. – Either of the following:

a. Biodiesel, as defined in G.S. 105-449.60.

b. Ethanol either unmixed or in mixtures with gasoline that are seventy percent (70%) or more ethanol by volume. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1998-55, s. 2; 1999-342, s. 2; 1999-360, s. 1; 2000-173, s. 1(a); 2001-431, s. 1; 2002-87, s. 3; 2004-153, s. 1; 2005-413, s. 4; 2006-162, s. 23; 2009-548, s. 1; 2010-167, s. 2(a).)

§§ 105-129.15A, 105-129.16: Repealed by Session Laws 2005-413, ss. 6 and 7, effective September 20, 2005.

§ 105-129.16A. (See subsections (e) through (h) for sunset provisions) Credit for investing in renewable energy property.

(a) Credit. – A taxpayer that has constructed, purchased, or leased renewable energy property is allowed a credit equal to thirty-five percent (35%) of the cost of the property if the property is placed in service in this State during the taxable year. In the case of renewable energy property that serves a nonbusiness purpose, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Upon request of a taxpayer that leases renewable energy property, the lessor of the property must give the taxpayer a statement that describes the renewable energy property and states the cost of the property. No credit is allowed under this section to the extent the cost of the renewable energy property was

provided by public funds. For the purposes of this section, "public funds" does not include grants made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Business. – A ceiling of two million five hundred thousand dollars ($2,500,000) applies to each installation of renewable energy property placed in service for a business purpose. Renewable energy property is placed in service for a business purpose if the useful energy generated by the property is offered for sale or is used on-site for a purpose other than providing energy to a residence.

(2) Nonbusiness. – The following ceilings apply to renewable energy property placed in service for a nonbusiness purpose:

a. One thousand four hundred dollars ($1,400) per dwelling unit for solar energy equipment for domestic water heating, including pool heating.

b. Three thousand five hundred dollars ($3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

c. Eight thousand four hundred dollars ($8,400) for each installation of geothermal equipment.

d. Ten thousand five hundred dollars ($10,500) for each installation of any other renewable energy property.

(3) Eco-Industrial Park. – A ceiling of five million dollars ($5,000,000) applies to each installation of renewable energy property placed in service at an Eco-Industrial Park certified under G.S. 143B-437.08 for a business purpose described in subdivision (1) of this subsection.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – Except for taxpayers covered by subsection (f) of this section, this section is repealed effective for renewable energy property placed into service on or after January 1, 2016.

(f) Delayed Sunset. – This section is repealed effective for renewable energy property placed in service on or after January 1, 2017, except as provided in subsection (g) of this section.

(g) Alternate Delayed Sunset. – This section is repealed effective for renewable energy property utilizing renewable biomass resources placed in service on or after May 5, 2017.

(h) Delayed Sunset Conditions. – A taxpayer is eligible for the delayed sunset provided by subsection (f) or (g) of this section if the taxpayer makes a timely application for the extension, pays the application fee, and meets both of the following conditions on or before January 1, 2016: (i) incurred at least the minimum percentage of costs of the project and (ii) completed at least the minimum percentage of the physical construction of the project. For a project with a total size of less than 65 megawatts of direct current capacity, the minimum percentage of incurred costs and partial construction is at least eighty percent (80%). For a project with a total size of 65 megawatts or more of direct current capacity, the minimum percentage of incurred costs and partial construction is at least fifty percent (50%).

An application and payment must be filed with the Secretary on or before October 1, 2015. The application must include the location of the project, an estimate of the total cost of the project, the total anticipated credit to be claimed, and the total size in megawatt capacity of each project proposed or under construction. The nonrefundable fee to be paid with the application is one thousand dollars ($1,000) per megawatt of capacity, with a minimum fee of five thousand dollars ($5,000).

A taxpayer must provide the documentation required under this subsection to the Department on or before March 1, 2016, to verify that the taxpayer meets the minimum percentage of incurred costs and partial construction required to be eligible for the sunset extension:

(1) A written certification signed by the taxpayer that, prior to January 1, 2016, at least the minimum percentage of the physical construction of the project was completed and that at least the minimum percentage of the total cost of the project was incurred.

(2) A notarized copy of a written report prepared by an independent engineer duly licensed in the State of North Carolina with expertise in the design and construction of installations of renewable energy property stating that at least the minimum percentage of the physical construction of the project was completed prior to January 1, 2016.

(3) A notarized copy of a written report prepared by a certified public accountant duly licensed to practice in the State of North Carolina with expertise in accounting for and taxation of renewable energy property and that was prepared in accordance with AT Section 201 of the American Institute of Certified Public Accountants Standards for Agreed-Upon Procedures Engagements stating that the minimum percentage of the total cost of the project was paid or incurred as determined under Section 461 and other relevant sections of the Code prior to January 1, 2016. (1999-342, s. 2; 2005-413, s. 5; 2009-548, s. 2; 2010-4, s. 1; 2010-147, s. 5.4; 2010-167, s. 2(b); 2015-6, s. 2.6; 2015-11, s. 1; 2015-264, s. 54.3; 2017-57, s. 38.13.)

§ 105-129.16B: Recodified as G.S. 105-129.41 by Session Laws 2002-87, s. 2, as amended by Session Laws 2003-416, s. 1, effective August 22, 2002, and applicable to credits for buildings for which a federal tax credit is first claimed for a taxable year beginning on or after January 1, 2002.

§ 105-129.16C: Repealed effective for taxable years beginning on or after January 1, 2006.

§ 105-129.16D. (Repealed effective for facilities placed in service on or after January 1, 2014) Credit for constructing renewable fuel facilities.

(a) Dispensing Credit. – A taxpayer that constructs and installs and places in service in this State a qualified commercial facility for dispensing renewable fuel is allowed a credit equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel.

The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the portion of the facility directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(b) Production Credit. – A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a credit equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

Notwithstanding subsection (d) of this section, this section is repealed effective for facilities placed in service on or after January 1, 2020, in the case of a taxpayer that meets both of the following conditions:

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

(2) Begins construction of the facility on or before December 31, 2013.

(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars ($400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars ($400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may take any remaining installment of the credit only to the extent allowed under subsection (b) of this section. The taxpayer may, however, take the portion of an installment under this subsection that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. Notwithstanding the provisions of G.S. 105-129.17, a taxpayer may carry forward unused portions of the credit allowed under this subsection for the succeeding 10 years.

If a taxpayer that claimed a credit under this subsection fails to meet the requirements of this subsection but meets the requirements of subsection (b) of this section, the taxpayer forfeits the difference between the alternative credit claimed under this subsection and the credit allowed under subsection (b) of this section. A taxpayer that forfeits part of the alternative credit under this subsection is liable for the additional taxes avoided plus interest at the rate established under G.S. 105-241.21, computed from the date the additional taxes would have been due if the credit had not been allowed. The additional taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the additional taxes and interest by the due date is subject to penalties provided in G.S. 105-236.

(c) No Double Credit. – A taxpayer may not claim the credits allowed under subsections (b) and (b1) of this section with respect to the same facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the costs of constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, 2014. (2004-153, s. 2; 2006-66, s. 24.7(a); 2006-259, s. 19.5(a); 2007-323, s. 31.9(a); 2010-95, s. 2; 2010-167, s. 1(a); 2012-36, s. 2; 2013-363, s. 11.3(a); 2016-113, s. 10.)

§ 105-129.16E. Expired effective January 1, 2010, pursuant to the terms of former subsection (d) of this section.

§ 105-129.16F. (Repealed for taxable years beginning on or after January 1, 2014) Credit for biodiesel producers.

(a) Credit. – A biodiesel provider that produces at least 100,000 gallons of biodiesel during the taxable year is allowed a credit equal to the per gallon excise tax the producer paid under Article 36C of this Chapter on the biodiesel. For the purposes of this section, "biodiesel" is liquid fuel derived in whole from agricultural products, animal fats, or wastes from agricultural products or animal fats. The credit does not apply to tax paid on diesel fuel included in a biodiesel blend. The credit may not exceed five hundred thousand dollars ($500,000) and is subject to the limitations of G.S. 105-129.17.

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2014. (2006-66, s. 24.8(a); 2010-167, s. 1(b); 2012-36, s. 3.)

§ 105-129.16G. (Expiring for taxable years beginning on or after January 1, 2014) Work Opportunity Tax Credit.

(a) Credit. – A taxpayer who is allowed a federal tax credit under Part IV, Subpart F of the Code for the taxable year is allowed a credit against the tax imposed by this Part. The credit is equal to a percentage of the amount of credit allowed under the Code for wages paid during the taxable year for positions located in this State. A position is located in this State if more than fifty percent (50%) of the employee's duties are performed in the State. The percentage is as follows:

(1) For taxable year 2013, three percent (3%).

(2) For all other taxable years, six percent (6%).

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2014. (2007-323, s. 31.21(a); 2008-134, s. 2(a); 2012-36, s. 4; 2013-10, s. 4.)

§ 105-129.16H. (For contingent repeal, see subsection (d)) Credit for donating funds to a nonprofit organization or unit of State or local government to enable the nonprofit or government unit to acquire renewable energy property.

(a) Credit. – A taxpayer who donates money to a tax-exempt nonprofit organization or a unit of State or local government for the purpose of providing funds for the organization or government unit to construct, purchase, or lease renewable energy property is allowed a credit under this section if the donation is used for its intended purpose. A tax-exempt nonprofit organization is an organization that is exempt from tax under section 501(c)(3) of the Code.

The amount of the credit allowed in this section is the taxpayer's share of the credit the nonprofit organization or the unit of State or local government could claim under G.S. 105-129.16A if the nonprofit organization or government unit were subject to tax. The taxpayer's share of the credit is calculated by dividing the taxpayer's donation by the cost of the renewable energy property constructed, purchased, or leased by the nonprofit organization or government unit and placed in service during the taxable year and then multiplying this percentage by the amount of the credit the nonprofit organization or government unit could claim if it were subject to tax. A taxpayer must take the credit allowed by this section for the taxable year in which the property is placed in service. The

installment requirements in G.S. 105-129.16A for nonresidential property do not apply to the credit allowed in this section.

(b) Records. – A nonprofit organization or a unit of State or local government must keep a record of all donations it receives for the purpose of providing funds for the organization to construct, purchase, or lease renewable energy property and of the amount of the donations used for this purpose. If a nonprofit organization or government unit places renewable energy property in service that is purchased in whole or in part from donations made for this purpose, the nonprofit organization or government unit must give each taxpayer who made a donation a statement setting out the amount of the credit for which the taxpayer qualifies under this section. The statement must describe the renewable energy property placed in service and state the cost of the property, the amount of the credit the nonprofit organization or government unit could claim under G.S. 105-129.16A if it were subject to tax, and the taxpayer's share of the credit allowed in this section. If the donations made for the renewable energy property exceed the cost of the property, the nonprofit organization or government unit must prorate each taxpayer's share of the credit. The sum of the credits allowed under this section to taxpayers who make donations to a nonprofit organization or a government unit may not exceed the amount of the credit the nonprofit organization or government unit could claim under G.S. 105-129.16A if it were subject to tax.

(c) No Double Benefit. – A taxpayer who claims a credit under this section based on a donation to a nonprofit organization or a unit of State or local government is not allowed to deduct this donation as a charitable contribution.

(d) Sunset. – This section is repealed as of the date that G.S. 105-129.16A is repealed. The repeal applies to donations made for renewable energy property placed in service on or after the date the section is repealed. (2007-397, s. 13(a); 2008-107, s. 28.25(a); 2008-134, s. 70; 2013-414, s. 32.)

§ 105-129.16I. (Repealed effective for a renewable energy property facility placed in service on or after January 1, 2014) Credit for a renewable energy property facility.

(a) Credit. – A taxpayer that places in service in this State a commercial facility for the manufacture of renewable energy property or a major component subassembly for a solar array or a wind turbine is allowed a credit. A taxpayer places a facility in service if it constructs the facility or converts its existing manufacturing facility to change the product it manufactures. For a taxpayer that constructs a facility, the credit is twenty-five percent (25%) of the taxpayer's cost to construct and equip the facility. For a taxpayer that converts a facility, the credit is twenty-five percent (25%) of the taxpayer's cost to convert and equip the existing facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the facility may not take the credit allowed in this section with respect to that facility.

(b) Installments. – The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in five equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the

years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) Sunset. – This section is repealed effective for a renewable energy property facility placed in service on or after January 1, 2014. (2010-167, s. 3(a).)

§ 105-129.16J. Temporary unemployment insurance refundable tax credit.

(a) Credit. – A small business that makes contributions during the taxable year to the State Unemployment Insurance Fund with respect to wages paid for employment in this State is allowed a credit equal to twenty-five percent (25%) of the contributions. A small business is a business whose cumulative gross receipts from business activity for the taxable year do not exceed one million dollars ($1,000,000).

(b) Refundable. – Notwithstanding G.S. 105-129.17, the credit allowed by this section is subject to the following:

(1) The credit may only be claimed against the income taxes imposed by Article 4 of this Chapter.

(2) If the credit exceeds the amount of tax imposed by Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the excess is refundable. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in that Article. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(c) Applicability. – This section applies only to taxable years 2010 and 2011. (2010-31, s. 31.1A(a).)

§ 105-129.17. Tax election; cap.

(a) Tax Election. – The credit allowed in G.S. 105-129.16A is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. All other credits allowed in this Article are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Cap. – The credits allowed in this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credits may be carried forward for the succeeding five years. (1996, 2nd Ex.

Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 13; 2000-140, ss. 63(a), 88; 2001-431, s. 3; 2002-87, s. 5; 2009-548, s. 3.)

§ 105-129.18. (See Editor's note for repeal) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 14; 2000-140, ss. 63(b), 88.)

§ 105-129.19. Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The cost of renewable energy property with respect to which credits were taken.

(2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

(3) The total cost to the General Fund of the credits taken. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 15; 2000-140, ss. 63(c), 88; 2001-414, s. 10; 2002-87, s. 6; 2005-429, s. 2.3; 2010-166, s. 1.2.)

§§ 105-129.20 through 105-129.24. Reserved for future codification purposes.

Article 3C.

Tax Incentives For Recycling Facilities.

§ 105-129.25. Definitions.

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Repealed by Session Laws 2010-166, s. 2.1, effective July 1, 2010.

(4) Machinery and equipment. – Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. – A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. – A person who owns or leases a recycling facility.

(7) Post-consumer waste material. – Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the

solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. – Defined in section 179 of the Code.

(9) Recycling facility. – A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant. (1998-55, s. 12; 2010-166, s. 2.1.)

§ 105-129.26. Qualification; forfeiture.

(a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was a development tier one area as defined in G.S. 143B-437.08.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) Repealed by Session Laws 2014-3, s. 14.2, effective May 29, 2014.

(b) Repealed by Session Laws 2010-166, s. 2.1, effective July 1, 2010.

(c) Forfeiture. – If the owner of a major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.21, computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. – To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be

allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number and location of major recycling facilities qualified under this Article.
(2) The number of new jobs created by each recycling facility.
(3) The amount of investment in each recycling facility.
(4) The amount of credits taken under this Article. (1998-55, s. 12; 2005-429, s. 2.4; 2007-491, s. 44(1)a; 2010-166, ss. 1.3, 2.1; 2013-414, s. 33; 2014-3, s. 14.2.)

§ 105-129.27. Credit for investing in major recycling facility.

(a) Credit. – An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. – The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. – The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. – The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. – If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. – A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9 or G.S. 105-129.88. (1998-55, s. 12; 1999-369, s. 5.3; 2007-491, s. 44(1)a; 2009-445, s. 3(a); 2010-166, s. 2.1.)

§ 105-129.28: Repealed by Session Laws 1998-55, s, 19, effective for taxable years beginning on or after January 1, 2008.

§§ 105-129.29 through 105-129.34. Reserved for future codification purposes.

Article 3D.

Historic Rehabilitation Tax Credits.

§ 105-129.35. Credit for rehabilitating income-producing historic structure.

(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to twenty percent (20%) of the expenditures that qualify for the federal credit. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

(b) Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the certified historic structure is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Definitions. – The following definitions apply in this section:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Pass-through entity. – Defined in G.S. 105-228.90.

(3) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(4) State Historic Preservation Officer. – Defined in G.S. 105-129.36. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 2, 5, 6; 2001-476, s. 19(a); 2003-284, s. 35A.1; 2003-415, ss. 1, 2; 2003-416, s. 4(c); 2004-170, s. 14; 2006-40, s. 2; 2007-461, s. 1.)

§ 105-129.36. Credit for rehabilitating nonincome-producing historic structure.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a State-certified historic structure located in this State is allowed a credit equal to thirty percent (30%) of the rehabilitation expenses. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars ($25,000) within a 24-month period. To claim the credit allowed by

this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

(b) Definitions. – The following definitions apply in this section:

(1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer.

(2) Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.

(3) State-certified historic structure. – A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.

(4) State Historic Preservation Officer. – The Deputy Secretary of Archives and History or the Deputy Secretary's designee who acts to administer the historic preservation programs within the State.

(c) Recodified as G.S. 105-129.36A by Session Laws 2003-284, s. 35A.2, effective July 15, 2003. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 3, 5, 6; 2002-159, s. 35(e); 2003-284, ss. 35A.2, 35A.3; 2006-40, ss. 3, 4.)

§ 105-129.36A. (See note for repeal) Rules; fees.

(a) Rules. – The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process required by this section.

(b) Fees. – The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt a schedule of fees for providing certifications required by this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department of Natural and Cultural Resources. An application fee may not exceed one percent (1%) of the completed qualifying rehabilitation expenditures. The proceeds of the fees are receipts of the Department of Natural and Cultural Resources and must be used for performing its duties under this Article. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 3, 5, 6; 2002-159, s. 35(e); 2003-284, s. 35A.2; 2015-241, s. 14.30(s).)

§ 105-129.37. Tax credited; credit limitations.

(a) Tax Credited. – The credits provided in this Article are allowed against the income taxes levied in Article 4 of this Chapter.

(b) Credit Limitations. – The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. A credit allowed under this Article may not exceed

the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.35 with respect to that historic structure. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(d) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed.

(e) Exceptions to Forfeiture. – Forfeiture as provided in subsection (d) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(f) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 4, 5, 6; 2007-491, s. 44(1)a.)

§ 105-129.38. (See note for repeal) Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken. (2005-429, s. 2.5; 2010-166, s. 1.4.)

§ 105-129.39. Sunset.

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2015. For qualified rehabilitation expenditures and rehabilitation expenses incurred prior to January 1, 2015, this Article expires for property

not placed in service by January 1, 2023. (2010-166, s. 1.5; 2012-36, s. 12(a); 2018-5, s. 38.10(j).)

Article 3E.

Low-Income Housing Tax Credits.

(See Editor's note for repeal of this Article.)

§ 105-129.40. (See Editor's note for repeal) Scope and definitions.

(a) Scope. – G.S. 105-129.41 applies to buildings that are awarded a federal credit allocation before January 1, 2003. G.S. 105-129.42 applies to buildings that are awarded a federal credit allocation on or after January 1, 2003.

(b) Definitions. – The definitions in section 42 of the Code and the following definitions apply in this Article:

(1) Housing Finance Agency. – The North Carolina Housing Finance Agency established in G.S. 122A-4.

(2) Pass-through entity. – Defined in G.S. 105-228.90. (2002-87, s. 1; 2003-416, s. 3.)

§ 105-129.41. (See note for repeal) Credit for low-income housing awarded a federal credit allocation before January 1, 2003.

(a) Credit. – A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

(a1) Tax Election. – The credit allowed in this section is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(a2) Cap. – The credit allowed in this section may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this section

against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

(b) Timing. – The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building. During the first taxable year in which the credit allowed under this section may be taken with respect to a building, the amount of the installment must be multiplied by the applicable fraction under section 42(f)(2)(A) of the Code. Any reduction in the amount of the first installment as a result of this multiplication is carried forward and may be taken in the first taxable year after the fifth installment is allowed under this section.

(b1) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code at the end of the taxable year in which the federal credit is first claimed, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Qualifying Buildings. – As used in this section the term "qualified North Carolina low-income building" means a qualified low-income building that was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3.

(1a) Expired pursuant to Session Laws 2000-56, s. 10(f), effective January 1, 2005.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(d) Expiration. – If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any remaining installment of the credit. If, in one of the five years in which an installment of the credit under this section accrues, the building no longer qualifies as a low-income building under subdivision (2) or (3) of subsection (c) of this section because less than forty percent (40%) of its residential units are both rent-restricted and occupied by individuals who meet the

income requirements, then the credit under this section expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(e) Forfeiture for Disposition. – If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer must report the recapture event to the Secretary and to the Housing Finance Agency. The taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated. This subsection does not apply when the recapture of part or all of the federal credit is the result of an event that occurs after the credit period described in subsection (b) of this section.

(f) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the federal credit is first claimed and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the federal credit is first claimed, the owner must report the change to the Secretary and to the Housing Finance Agency. The owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed. Forfeiture as provided in this subsection is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(g) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1999-360, s. 11; 2000-56, s. 7; 2000-140, s. 88; 2001-431, s. 2; 2002-87, s. 2; 2003-416, s. 1; 2007-491, s. 44(1)a.)

§ 105-129.42. (See note for repeal) Credit for low-income housing awarded a federal credit allocation on or after January 1, 2003.

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

(1) Qualified Allocation Plan. – The plan governing the allocation of federal low-income housing tax credits for a particular year, as approved by the Governor after a public hearing and publication in the North Carolina Register.

(2) Qualified North Carolina low-income housing development. – A qualified low-income project or building that is allocated a federal tax credit under section 42(h)(1) of the Code and is described in subsection (c) of this section.

(3) Qualified residential unit. – A housing unit that meets the requirements of section 42 of the Code.

(b) Credit. – A taxpayer who is allocated a federal low-income housing tax credit under section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is allowed a credit equal to a percentage of the development's qualified basis, as determined pursuant to section 42 of the Code. For the purpose of this section, qualified basis is calculated based on the information contained in the carryover allocation and is not recalculated to reflect subsequent increases or decreases. No credit is allowed for a development that uses tax-exempt bond financing.

(c) Developments and Amounts. – The following table sets out the housing developments that are qualified North Carolina low-income housing developments and are allowed a credit under this section. The table also sets out the percentage of the development's qualified basis for which a credit is allowed. The designation of a county or city as Low Income, Moderate Income, or High Income and determinations of affordability are made by the Housing Finance Agency in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. A change in the income designation of a county or city after a federal credit is allocated does not affect the percentage of the developer's qualified basis for which a credit is allowed. The affordability requirements set out in the chart apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited under subsection (h) of this section.

Type of Development	Percentage of Basis for Which Credit is Allowed
Forty percent (40%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of area median income and the units are in a Low-Income county or city.	Thirty percent (30%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of the area median income and the units are in a Moderate-Income county or city.	Twenty percent (20%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is forty percent (40%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)

Twenty-five percent (25%) of the qualified residential units are affordable to households whose income is thirty percent (30%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)

(d) Election. – When a taxpayer to whom a federal low-income housing credit is allocated submits to the Housing Finance Agency a request to receive a carryover allocation for that credit, the taxpayer must elect a method for receiving the tax credit allowed by this section. A taxpayer may elect to receive the credit in the form of either a direct tax refund or a loan generated by transferring the credit to the Housing Finance Agency. Neither a direct tax refund nor a loan received as the result of the transfer of the credit is considered taxable income under this Chapter.

Under the direct tax refund method, a taxpayer elects to apply the credit allowed by this section to the taxpayer's liability under Article 4 of this Chapter. If the credit allowed by this section exceeds the amount of tax imposed by Article 4 for the taxable year, reduced by the sum of all other credits allowable, the Secretary must refund the excess. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before this credit. The provisions that apply to an overpayment of tax apply to the refundable excess of a credit allowed under this section.

Under the loan method, a taxpayer elects to transfer the credit allowed by this section to the Housing Finance Agency and receive a loan from that Agency for the amount of the credit. The terms of the loan are specified by the Housing Finance Agency in accordance with the Qualified Allocation Plan.

(e) Exception When No Carryover. – If a taxpayer does not submit to the Housing Finance Agency a request to receive a carryover allocation, the taxpayer must elect the method for receiving the credit allowed by this section when the taxpayer submits to the Agency federal Form 8609. A taxpayer to whom this subsection applies claims the credit for the taxable year in which the taxpayer submits federal Form 8609.

(f) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

(g) Return and Payment. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the taxpayer receives a carryover allocation of a federal low-income housing credit. The return must state the name and location of the qualified low-income housing development for which the credit is claimed.

If a taxpayer chooses the loan method for receiving the credit allowed under this section, the Secretary must transfer to the Housing Finance Agency the amount of credit allowed the taxpayer. The Agency must loan the taxpayer the amount of the credit on terms consistent with the Qualified Allocation Plan. The Housing Finance Agency is not required to make a loan to a qualified North Carolina low-income housing development until the Secretary transfers the credit amount to the Agency.

If the taxpayer chooses the direct tax refund method for receiving the credit allowed under this section, the Secretary must transfer to the Housing Finance Agency the refundable excess of the credit allowed the taxpayer. The Agency holds the refund due the taxpayer in escrow, with no

interest accruing to the taxpayer during the escrow period. The Agency must release the refund to the taxpayer upon the occurrence of the earlier of the following:

(1) The Agency determines that the taxpayer has complied with the Qualified Allocation Plan and has completed at least fifty percent (50%) of the activities included in the development's qualified basis.

(2) Within 30 days after the date the development is placed in service.

(h) Forfeiture. – A taxpayer that receives a credit under this section must immediately report any recapture event under section 42 of the Code to the Housing Finance Agency. If the taxpayer or any of its owners are required under section 42(j) of the Code to recapture all or part of a federal credit with respect to a qualified North Carolina low-income development, the taxpayer forfeits the corresponding part of the credit allowed under this section. This requirement does not apply in the following circumstances:

(1) When the recapture of part or all of the federal credit is the result of an event that occurs in the sixth or a subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.

(2) The taxpayer elected to transfer the credit allowed by this section to the Housing Finance Agency.

(i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed under this section is liable for all past taxes avoided and any refund claimed as a result of the credit plus interest at the rate established under G.S. 105-241.21. The interest is computed from the date the Secretary transferred the credit amount to the Housing Finance Agency. The past taxes, refund, and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in G.S. 105-236. (2002-87, s. 1; 2003-416, ss. 6-8; 2004-110, s. 4.2; 2007-491, s. 44(1)a.)

§ 105-129.43. (See Editor's note for repeal) Substantiation.

A taxpayer allowed a credit under this Article must maintain and make available for inspection any information or records required by the Secretary of Revenue or the Housing Finance Agency. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer. (2002-87, s. 1.)

§ 105-129.44. (See note for repeal) Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was taken.

(3) The total cost to the General Fund of the credits taken. (2002-87, s. 1; 2005-429, s. 2.6; 2010-166, s. 1.6.)

§ 105-129.45. Sunset.

This Article is repealed effective January 1, 2015. The repeal applies to developments to which federal credits are allocated on or after January 1, 2015. (2002-87, s. 1; 2004-110, s. 4.1; 2008-107, s. 28.3(a).)

§ 105-129.46: Reserved for future codification purposes.

§ 105-129.47: Reserved for future codification purposes.

§ 105-129.48: Reserved for future codification purposes.

§ 105-129.49: Reserved for future codification purposes.

Article 3F.

Research and Development.

§ 105-129.50. (See note for repeal) Definitions.

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

(1) Development tier one area. – Defined in G.S. 143B-437.08.

(2) Full-time job. – Defined in G.S. 105-129.81.

(3) Reserved.

(4) North Carolina university research expenses. – Any amount the taxpayer paid or incurred to a research university for qualified research performed in this State or basic research performed in this State.

(4a) (Repealed effective for taxable years beginning on or after January 1, 2014) Participating community college. – A community college, as defined in G.S. 115D-2, that offers an associate in applied science degree in simulation and game development.

(5) Period of measurement. – Defined in the Small Business Size Regulations of the federal Small Business Administration.

(6) Qualified North Carolina research expenses. – Qualified research expenses, other than North Carolina university research expenses, for research performed in this State.

(7) Receipts. – Defined in the Small Business Size Regulations of the federal Small Business Administration.

(8) Related person. – Defined in G.S. 105-163.010.

(9) Research university. – An institution of higher education that meets one or both of the following conditions:

a. It is classified as one of the following in the most recent edition of "A Classification of Institutions of Higher Education", the official report of The Carnegie Foundation for the Advancement of Teaching:

1. Doctoral/Research Universities, Extensive or Intensive.

2. Masters Colleges and Universities, I or II.

3. Baccalaureate Colleges, Liberal Arts or General.

b. It is a constituent institution of The University of North Carolina.

(10) Small business. – A business whose annual receipts, combined with the annual receipts of all related persons, for the applicable period of measurement did not exceed one million dollars ($1,000,000). (2004-124, s. 32D.2; 2010-147, s. 3.2; 2011-330, s. 4; 2013-316, s. 2.3(b).)

§ 105-129.51. (See note for repeal) Taxpayer standards and sunset.

(a) A taxpayer is eligible for a credit allowed in this Article if it satisfies the requirements of G.S. 105-129.83(c), (d), (e), (f), and (g) relating to wage standard, health insurance, environmental impact, safety and health programs, and overdue tax debts, respectively.

(b) This Article is repealed for taxable years beginning on or after January 1, 2016.

(c) Repealed by Session Laws 2004-124, s. 32D.4, effective for taxable years beginning on or after January 1, 2006. (2004-124, ss. 32D.2, s. 32D.4; 2006-252, s. 2.20; 2008-107, s. 28.2(a); 2010-147, s. 3.3; 2013-316, s. 2.3(c).)

§ 105-129.52. (See note for repeal) Tax election; cap.

(a) Tax Election. – A credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the credit is first claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Cap. – A credit allowed in this Article may not exceed fifty percent (50%) of the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit allowed in this Article may be carried forward for the succeeding 15 years. (2004-124, s. 32D.2; 2010-96, s. 40.3; 2010-147, s. 3.4.)

§ 105-129.53. (See notes) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. (2004-124, s. 32D.2.)

§ 105-129.54. Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by taxpayer:

(1) The number of taxpayers that took a credit allowed in this Article, itemized by the categories of small business, low-tier, university research, Eco-Industrial Park, and other.

(2) The amount of each credit taken in each category.

(3) The total cost to the General Fund of the credits taken. (2004-124, s. 32D.2; 2005-429, s. 2.7; 2010-147, s. 3.5; 2010-166, s. 1.7; 2013-316, s. 2.3(d).)

§ 105-129.55. (See note for repeal) Credit for North Carolina research and development.

(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this section. Only one credit is allowed under this section with respect to the same expenses. If more than one subdivision of this section applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under more than one subdivision of this section, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three and one-quarter percent (3.25%).

(2) Low-tier research. – For expenses with respect to research performed in a development tier one area, the applicable percentage is three and one-quarter percent (3.25%).

(2a) University research. – For North Carolina university research expenses, the applicable percentage is twenty percent (20%).

(2b) Eco-Industrial Park. – For expenses with respect to research performed in an Eco-Industrial Park certified under G.S. 143B-437.08, the applicable percentage is thirty-five percent (35%).

(3) Other research. – For expenses not covered under another subdivision of this section, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	$50 million	1.25%
$50 million	$200 million	2.25%
$200 million	–	3.25%

(b) Repealed by Session Laws 2010-147, s. 5.5, effective January 1, 2011. (2004-124, s. 32D.2; 2006-252, s. 2.1; 2007-323, s. 31.8(a); 2010-147, s. 5.5.)

§ 105-129.56. (Repealed effective for taxable years beginning on or after January 1, 2014) Interactive digital media.

(a) IDM Defined. – Interactive digital media is a product that meets all of the following requirements:

(1) It is produced for distribution on electronic media, including distribution by file download over the Internet.

(2) It contains a computer-controlled virtual universe with which an individual who uses the program may interact in order to achieve a goal.

(3) It contains a significant amount of at least three of the following five types of data: animated images, fixed images, sound, text, and 3D geometry.

(b) Credit. – A taxpayer that develops in this State interactive digital media or a digital platform or engine for use in interactive digital media is allowed a credit equal to a

percentage of the taxpayer's expenses that exceed fifty thousand dollars ($50,000) and that are paid during the taxable year in developing the media, platform, or engine. The percentage that applies to the expenses is determined under subsection (c) of this section. The expenses to which the credit applies are as follows:

(1) Compensation and wages for a full-time job on which withholding payments are remitted to the Department under Article 4A of this Chapter.

(2) Employee fringe contributions on compensation and wages included under subdivision (1) of this subsection, including health, pension, and welfare contributions.

(3) Amounts paid to a participating community college or a research university for services performed in this State.

(c) Percentage. – The percentage of the credit allowed under this section is as follows:

(1) Higher education collaboration. – Twenty percent (20%) for allowable expenses paid to a participating community college or a research university.

(2) Other. – Fifteen percent (15%) for allowable expenses not covered in subdivision (1) of this subsection.

(d) Limitations. – The amount of credit allowed a taxpayer under this section may not exceed seven million five hundred thousand dollars ($7,500,000). The credit allowed by this section does not apply to interactive digital media that meets any of the following descriptions:

(1) It is developed by the taxpayer for internal use.

(2) It is an interpersonal communications service, such as videoconferencing, wireless telecommunications, a text-based channel, or a chat room.

(3) It is an Internet site that is primarily static and primarily designed to provide information about one or more persons, businesses, companies, or firms.

(4) It is a gambling or casino game.

(5) It is political advertising.

(6) It contains material that is obscene, as defined in G.S. 14-190.1, or that is harmful to minors, as defined in G.S. 14-190.13.

(e) No Double Benefit. – A taxpayer that claims a credit under this section may not claim any of the following with respect to the expenses used to determine the credit under this section:

(1) A credit allowed under any other section of this Chapter.

(2) A grant from the Job Development Investment Grant Program, set out in Part 2G of Article 10 of Chapter 143B of the General Statutes.

(3) A grant from the One North Carolina Fund, set out in Part 2H of Article 10 of Chapter 143B of the General Statutes. (2010-147, s. 3.6; 2013-316, s. 2.3(b).)

§ 105-129.57: Reserved for future codification purposes.

§ 105-129.58: Reserved for future codification purposes.

§ 105-129.59: Reserved for future codification purposes.

Article 3G.

Tax Incentives for Major Computer Manufacturing Facilities.

§ 105-129.60: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.61: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.62: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.63: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.64: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.65: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.65A: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.66: Repealed by Session Laws 2010-166, s. 2.2, effective July 1, 2010.

§ 105-129.67: Reserved for future codification purposes.

§ 105-129.68: Reserved for future codification purposes.

§ 105-129.69: Reserved for future codification purposes.

Article 3H.

Mill Rehabilitation Tax Credit.

(See G.S. 105-129.75 for repeal of this Article.)

§ 105-129.70. (See note for repeal) Definitions.

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to a certified rehabilitation of an eligible site.

(3a) Development tier area. – Defined in G.S. 143B-437.08.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

d. Repealed by Session Laws 2008-107, s. 28.4(a), effective for taxable years beginning on or after January 1, 2008.

(6) Repealed by Session Laws 2006-252, s. 2.22, effective January 1, 2007.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36. (2006-40, s. 1; 2006-252, s. 2.22; 2008-107, s. 28.4(a).)

§ 105-129.71. (See note for repeal) Credit for income-producing rehabilitated mill property.

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures of at least three million dollars ($3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For an eligible site located in a development tier one or two area, determined as of the date of the eligibility certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in a development tier three area, determined as of the date of the eligibility certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (2006-40, s. 1; 2006-252, s. 2.23; 2006-259, s. 47.5; 2007-491, s. 44(1)a; 2008-107, s. 28.4(b).)

§ 105-129.72. (See note for repeal) Credit for nonincome-producing rehabilitated mill property.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses of at least three million dollars ($3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in a development tier one or two area, determined as of the date of the eligibility certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in a development tier three area.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable

year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (2006-40, s. 1; 2006-252, s. 2.24; 2007-491, s. 44(1)a; 2008-107, s. 28.4(c).)

§ 105-129.73. (See note for repeal) Tax credited; cap.

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years. (2006-40, s. 1.)

§ 105-129.74. (See note for repeal) Coordination with Article 3D of this Chapter.

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article. (2006-40, s. 1.)

§ 105-129.75. Sunset.

This Article expires January 1, 2015, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date. Eligibility certifications under this Article expire January 1, 2023. (2006-40, s. 1; 2008-107, s. 28.4(d); 2010-31, s. 31.5(a); 2012-36, s. 12(b); 2015-241, s. 32.3(b).)

§ 105-129.75A. (See note for repeal) Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken. (2010-166, s. 1.8.)

Article 3I.

§ 105-129.76. Reserved for future codification purposes.

§ 105-129.77. Reserved for future codification purposes.

Article 3I.

§ 105-129.78. Reserved for future codification purposes.

§ 105-129.79. Reserved for future codification purposes.

Article 3J.

Tax Credits for Growing Businesses.

(See G.S. 105-129.82(a) for repeal of Article.)

§ 105-129.80. (See notes) Legislative findings.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging, and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina, and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry. (2006-252, s. 1.1.)

§ 105-129.81. (See notes) Definitions.

The following definitions apply in this Article:

(1) Agrarian growth zone. – Defined in G.S. 143B-437.010.

(2) Air courier services. – Defined in G.S. 143B-437.01.

(3) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

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

(5) Company headquarters. – Defined in G.S. 143B-437.01.

(6) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(7) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(8) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(9) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(9a) Environmental disqualifying event. – Any of the following occurrences:

a. During the tax year in which the activity occurred for which a credit is being claimed, a civil penalty was assessed against the taxpayer by the

Department of Environmental Quality for failure to comply with an order issued by an agency of the Department to abate or remediate a violation of any program administered by the agency.

b. During the tax year in which the activity occurred for which a credit is being claimed or in the prior two tax years, any of the following:

1. A finding was made by the Department of Environmental Quality that the taxpayer knowingly and willfully, as defined in G.S. 143-215.6B, including all limitations thereto, committed a violation of any program implemented by an agency of the Department.
2. An assessment for damages to fish or wildlife pursuant to G.S. 143-215.3(a)(7) was made against the taxpayer.
3. A judicial order for injunctive relief was issued against the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environmental Quality.

c. During the tax year in which the activity occurred for which the credit is being claimed or in the prior four tax years, a criminal penalty was imposed on the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environmental Quality.

(10) Establishment. – Defined in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.

(11) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(12) Hub. – Defined in G.S. 105-164.3.

(13) Information technology and services. – Defined in G.S. 143B-437.01.

(14) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Division of Employment Security (DES) of the Department of Commerce.

(15) Manufacturing. – Defined in G.S. 143B-437.01.

(16) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(17) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(18) NAICS. – Defined in G.S. 105-228.90.

(19) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.

(20) Overdue tax debt. – Defined in G.S. 105-243.1.

(20a) Port enhancement zone. – Defined in G.S. 143B-437.013.

(21) Purchase. – Defined in section 179 of the Code.

(22) Related member. – Defined in G.S. 105-130.7A.
(23) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.
(24) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.
(25) Warehousing. – Defined in G.S. 143B-437.01.
(26) Wholesale trade. – Defined in G.S. 143B-437.01. (2006-252, s. 1.1; 2007-484, s. 33(b); 2010-147, s. 1.3; 2011-302, s. 6; 2011-330, s. 31(b); 2011-401, s. 5.1; 2012-79, s. 2.4; 2013-360, s. 15.18(b); 2015-241, s. 14.30(u).)

§ 105-129.82. (See notes) Sunset; studies.

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2014.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.
(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Studying the distribution of tax incentives across new and expanding businesses and industries.
(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.
(3) Measuring the direct costs and benefits of the tax incentives.
(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009. (2006-252, s. 1.1; 2010-147, s. 1.1; 2012-36, s. 5.)

§ 105-129.83. Eligibility; forfeiture.

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the

establishment's principal product or group of products produced or distributed, or services rendered.

(1) Air courier services hub.
(2) Aircraft maintenance and repair.
(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone, a port enhancement zone, or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use

the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires, and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, there has not been a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event. For the purposes of this section, a "final determination unfavorable to the taxpayer" occurs when there is no further opportunity for the taxpayer to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn. No later than January 31 of each year, the Secretary of Environmental Quality shall provide an annual report to the Department listing all environmental disqualifying events for which a final determination unfavorable to the taxpayer was made in the prior calendar year and shall provide the name of the taxpayer involved and the date that the disqualifying event occurred.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section at the establishment for which the credit was claimed, the

credit expires. If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer forfeits a credit previously allowed under this Article if a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event is made that is applicable to the year in which the activity occurred for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term "business" means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, "acquired" means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in

excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in a development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(*l*) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone, port enhancement zone, or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone, port enhancement zone, or agrarian growth zone designations in effect at that time.

(m) Qualified Capital Intensive Corporations. – A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for any credit under this Article with respect to the facility that satisfies the condition of subdivision (2) of that subsection. (2006-252, s. 1.1; 2007-491, s. 44(1)a; 2009-54, s. 3; 2010-147, s. 1.4; 2011-302, s. 7; 2015-241, s. 14.30(v).)

§ 105-129.84. (See notes) Tax election; cap; carryforwards; limitations.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period,

at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the standard carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

(e) Credit Treated as Tax Payment. – The owner of a pass-through entity that claims a credit under this Article may treat some or all of the credit claimed as a tax payment made by or on behalf of the taxpayer. A credit claimed that is treated as a tax payment is subject to all provisions of this section. A credit claimed that is treated as a tax payment does not accrue interest under G.S. 105-241.21 if the payment is determined to be an overpayment. A taxpayer that elects to have a credit claimed under this Article treated as a tax payment must make this election when the return is filed. (2006-252, s. 1.1; 2011-297, s. 4; 2013-414, s. 4.)

§ 105-129.85. (See notes) Fees and reports.

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by taxpayer:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken. (2006-252, s. 1.1; 2010-166, s. 1.9.)

§ 105-129.86. (See notes) Substantiation.

(a) Records. – To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit

shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article. (2006-252, s. 1.1.)

§ 105-129.87. (See notes) Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone, a port enhancement zone, or an agrarian growth zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone, a port enhancement zone, or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress zone, a port enhancement zone, or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of county.

Area Development Tier	Threshold

Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, a port enhancement zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires, and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8. (2006-252, s. 1.1; 2007-527, s. 6; 2011-302, s. 8.)

§ 105-129.88. (See notes) Credit for investing in business property.

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone, a port enhancement zone, or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress zone, a port enhancement zone, or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(d) Expiration. – As used in this subsection, the term "disposed of" means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or out of an urban progress zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with

respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A. (2006-252, s. 1.1; 2007-527, ss. 7, 8; 2011-302, s. 9.)

§ 105-129.89. (See notes) Credit for investment in real property.

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.83 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.81 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.83.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one

of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A. (2006-252, s. 1.1.)

§ 105-129.90. Reserved for future codification purposes.

§ 105-129.91. Reserved for future codification purposes.

§ 105-129.92. Reserved for future codification purposes.

§ 105-129.93. Reserved for future codification purposes.

§ 105-129.94. Reserved for future codification purposes.

Article 3K.

Tax Incentives for Railroad Intermodal Facilities.

(Repealed for taxable years beginning on or after January 1, 2038. See G.S. 105-129.99.)

§ 105-129.95. (Repealed for taxable years beginning on or after January 1, 2038 – see note) Definitions.

The following definitions apply in this Article:

(1) Costs of construction. – The costs of acquiring and improving land, constructing buildings and other structures, equipping the facility, and constructing and equipping rail tracks to the railroad intermodal facility that are necessary to access and support facility operations. In the case of property owned or leased by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code.

(2) Eligible railroad intermodal facility. – A railroad intermodal facility whose costs of construction exceed thirty million dollars ($30,000,000).

(3) Intermodal facility. – A facility where freight is transferred from one mode of transportation to another.

(4) Railroad intermodal facility. – An intermodal facility whose primary purpose is to transfer freight between a railroad and another mode of transportation. (2007-323, s. 31.23(a); 2007-345, s. 14.7(a).)

§ 105-129.96. (Repealed for taxable years beginning on or after January 1, 2038 – see note) Credit for constructing a railroad intermodal facility.

(a) **(Effective for taxable years beginning before January 1, 2017)** Credit. – A taxpayer that constructs or leases an eligible railroad intermodal facility in this State and places it in service during the taxable year is allowed a tax credit equal to fifty percent (50%) of all amounts payable by the taxpayer towards the costs of construction or under the lease.

(a) **(Effective for taxable years beginning on or after January 1, 2017)** Credit. – A taxpayer that constructs or leases an eligible railroad intermodal facility in this State is allowed a tax credit equal to fifty percent (50%) of all amounts payable by the taxpayer towards the costs of construction or under the lease if the facility is placed in service in this State during the taxable year. No credit is allowed under this section to the extent the cost of the eligible railroad intermodal facility was provided by public funds.

(b) Taxes Credited. – The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. The credit may not exceed fifty percent (50%) of the tax against which it is applied. Any unused portion of a credit may be carried forward for the succeeding 10 years. Any carryforwards of a credit must be claimed against the same tax.

(c) **(Effective for taxable years beginning on or after January 1, 2017)** No Double Credit. – A taxpayer may not take the credit allowed in this section for an eligible railroad intermodal facility the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the facility. (2007-323, s. 31.23(a); 2017-39, s. 3(a).)

§ 105-129.97. (Repealed for taxable years beginning on or after January 1, 2038 – see note) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary. Each taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. (2007-323, s. 31.23(a).)

§ 105-129.98. (Repealed for taxable years beginning on or after January 1, 2038 – see note) Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that claimed a credit allowed in this Article.
(2) The amount of each credit claimed and the taxes against which it was applied.
(3) The total cost to the General Fund of the credits claimed. (2007-323, s. 31.23(a); 2010-166, s. 1.10.)

§ 105-129.99. Sunset.

This Article is repealed effective for taxable years beginning on or after January 1, 2038. (2007-323, s. 31.23(a).)

§ 105-129.100: Reserved for future codification purposes.

§ 105-129.101: Reserved for future codification purposes.

§ 105-129.102: Reserved for future codification purposes.

§ 105-129.103: Reserved for future codification purposes.

§ 105-129.104: Reserved for future codification purposes.

Article 3L.

Historic Rehabilitation Tax Credits Investment Program.

§ 105-129.105. (See note for repeal) Credit for rehabilitating income-producing historic structure.

(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to the sum of the following:

(1) Base amount. – The percentage of qualified rehabilitation expenditures at the levels provided in the table below:

Expenses Over	**Up To**	**Rate**
0	$10 million	15.00%
$10 million	$20 million	10.00%

(2) Development tier bonus. – An amount equal to five percent (5%) of qualified rehabilitation expenditures not exceeding twenty million dollars ($20,000,000) if the certified historic structure is located in a development tier one or two area.

(3) Targeted investment bonus. – An amount equal to five percent (5%) of qualified rehabilitation expenditures not exceeding twenty million dollars ($20,000,000) if the certified historic structure is located on an eligible targeted investment site.

(b) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the certified historic structure is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A

pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Definitions. – The following definitions apply in this section:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Development tier area. – Defined in G.S. 143B-437.08.

(3) Eligibility certification. – A certification obtained from the State Historic Preservation Officer that the site comprises an eligible targeted investment site.

(4) Eligible targeted investment site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.

b. It is a certified historic structure.

c. It has been at least sixty-five percent (65%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

(5) Pass-through entity. – Defined in G.S. 105-228.90.

(6) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(7) State Historic Preservation Officer. – The Deputy Secretary of the Office of Archives and History of the North Carolina Department of Natural and Cultural Resources, or the Deputy Secretary's designee, who acts to administer the historic preservation programs within the State.

(8) Targeted investment. – Qualified rehabilitation expenditures on a certified historic structure that is located on an eligible targeted investment site.

(d) Limitations. – The amount of credit allowed under this section with respect to qualified rehabilitation expenditures for an income-producing certified historic structure may not exceed four million five hundred thousand dollars ($4,500,000).

(e) 2014 and 2015 Expenses. – A taxpayer is eligible for a credit under this section for taxable years beginning on or after January 1, 2016, for qualifying rehabilitation expenditures that were incurred in 2014 and 2015 if all of the following conditions are met:

(1) The certified historic structure is located in a Tier 1 or a Tier 2 county.

(2) The certified historic structure is owned by a city.

(3) The qualifying rehabilitation activity commenced in 2014.

(4) A certificate of occupancy is issued on or before December 31, 2015.

(5) The taxpayer meets all of the other conditions in this section. (2015-241, ss. 14.30(c), 32.3(a); 2015-264, s. 54.5(a), (b); 2017-102, s. 33.)

§ 105-129.106. (See note for repeal) Credit for rehabilitating non-income-producing historic structure.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who has rehabilitation expenses of at least ten thousand dollars ($10,000) for a State-certified historic structure located in this State is allowed a credit equal to fifteen percent (15%) of the rehabilitation expenses.

(b) **(Effective for taxable years beginning before January 1, 2017)** Limitations. – The amount of credit allowed under this section with respect to rehabilitation expenses for a non-income-producing certified historic structure may not exceed twenty-two thousand five hundred dollars ($22,500) per discrete property parcel. In the event that the taxpayer is the transferee of a State-certified historic structure for which rehabilitation expenses were made, the taxpayer as transferee is allowed a credit under this section only if the transfer takes place before the structure is placed in service. In this event, no other taxpayer may claim such credit. A taxpayer is allowed to claim a credit under this section no more than once in any five-year period, carryovers notwithstanding.

(b) **(Effective for taxable years beginning on or after January 1, 2017)** Limitations. – The amount of credit allowed under this section with respect to rehabilitation expenses for a non-income-producing certified historic structure may not exceed twenty-two thousand five hundred dollars ($22,500) per discrete property parcel. In the event that the taxpayer is the transferee of a State-certified historic structure for which rehabilitation expenses were made, the taxpayer as transferee is allowed a credit under this section for the rehabilitation expenses made by the transferor only if the transfer takes place before the structure is placed in service. In this event, the transferor must provide the transferee with documentation detailing the amount of rehabilitation expenses and credit. No other taxpayer may claim such credit. A taxpayer is allowed to claim a credit under this section no more than once in any five-year period, carryovers notwithstanding.

(c) Definitions. – The following definitions apply in this section:

(1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer.

(2) Discrete property parcel. – A lot or tract described by metes and bounds, a deed or plat of which has been recorded in the deed records of the county in which the property is located, and on which a State-certified historic structure is located, or a single condominium unit in a State-certified historic structure.

(3) Placed in service. – The later of the date on which the rehabilitation is completed or the date on which the property is used for its intended purpose.

(4) Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The expenses must be incurred within any 24-month period per discrete property parcel. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of site work expenditures, or the cost of personal property.

(5) State-certified historic structure. – A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.

(6) State Historic Preservation Officer. – Defined in G.S. 105-129.105(c)(7). (2015-241, s. 32.3(a); 2015-264, s. 54.5(b); 2017-102, s. 33; 2017-204, s. 1.4(a).)

§ 105-129.107. (See note for repeal) Rules; fees.

(a) Rules. – The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer any certification process required by this Article.

(b) Fees. – The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt a schedule of fees for providing any certifications required by this Article, or Article 3D or 3H as they provided as of December 31, 2014. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department of Natural and Cultural Resources. An application fee may not exceed one percent (1%) of the completed qualifying rehabilitation expenditures. The proceeds of the fees are receipts of the Department of Natural and Cultural Resources and must be used for performing its duties under this Article. (2015-241, ss. 14.30(c), 32.3(a); 2015-264, s. 54.5(b).)

§ 105-129.108. (See note for repeal) Tax credited; credit limitations.

(a) Tax Credited. – The credits provided in this Article are allowed against the franchise tax imposed in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax imposed in Article 8B of this Chapter. The taxpayer may take a credit allowed by this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which it is claimed, and this election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Return. – A taxpayer may claim a credit allowed by this Article on a return filed for the taxable year in which the certified historic structure was placed into service. When an income-producing certified historic structure as defined in G.S. 105-129.105 is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year.

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

(d) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.105 with respect to that historic structure. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(e) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.105 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the

pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(f) Exceptions to Forfeiture. – Forfeiture as provided in subsection (e) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(g) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(h) Substantiation. – To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue, including a copy of the certification obtained from the State Historic Preservation Office verifying that the historic structure has been rehabilitated in accordance with the requirements set out in this Article, and a copy of the eligibility certification if the historic structure is located in an eligible targeted investment site and the targeted investment bonus is claimed. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(i) No Double Credit. – A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D or Article 3H of this Chapter with respect to the same activity. (2015-241, s. 32.3(a); 2015-264, s. 54.5(b); 2015-268, s. 10.1(b).)

§ 105-129.109. (See note for repeal) Report; tracking.

(a) The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken.

(b) The Department shall include in the economic incentives report required by G.S. 105-256 the following information:

(1) The total amount of tax credits claimed and the total amount of tax credits taken against current taxes, by type of tax, during the relevant tax year.

(2) The total amount of tax credits carried forward, by type of tax. (2015-241, s. 32.3(a); 2015-264, s. 54.5(b).)

§ 105-129.110. Sunset.

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2020. For qualified rehabilitation expenditures and rehabilitation expenses incurred prior to January 1, 2020, this Article expires for property not placed in service by January 1, 2028. (2015-241, s. 32.3(a); 2015-264, s. 54.5(b); 2017-102, s. 33; 2018-5, s. 38.10(k).)

Article 4.

Income Tax.

Part 1. Corporation Income Tax.

§ 105-130. Short title.

This Part of the income tax Article shall be known and may be cited as the Corporation Income Tax Act. (1939, c. 158, s. 300; 1967, c. 1110, s. 3; 1998-98, ss. 42, 61, 68.)

§ 105-130.1. Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the net income of every domestic corporation and of every foreign corporation doing business in this State.

The tax imposed upon the net income of corporations in this Part is in addition to all other taxes imposed under this Subchapter. (1939, c. 158, s. 301; 1967, c. 1110, s. 3; 1998-98, s. 69.)

§ 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) Code. – Defined in G.S. 105-228.90.

(3) Corporation. – A joint-stock company or association, an insurance company, a domestic corporation, a foreign corporation, or a limited liability company.

(4) C Corporation. – A corporation that is not an S Corporation.

(5) Department. – The Department of Revenue.

(6) Domestic corporation. – A corporation organized under the laws of this State.

(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.

(8) Foreign corporation. – Any corporation other than a domestic corporation.

(9) Gross income. – Defined in section 61 of the Code.

(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.

(11) Limited liability company. – Either a domestic limited liability company organized under Chapter 57D 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.

(13) S Corporation. – Defined in G.S. 105-131(b).

(14) Secretary. – The Secretary of Revenue.

(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.

(17) Taxable year. – Income year.

(18) Taxpayer. – A corporation subject to the tax imposed by this Part. (1939, c. 158, s. 302; 1941, c. 50, s. 5; 1955, c. 1331, s. 2; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, ss. 68, 82; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 3; 1989, c. 36, s. 3; 1989 (Reg. Sess., 1990), c. 981, s. 3; 1991, c. 689, s. 257; 1991 (Reg. Sess., 1992), c. 922, s. 4; 1993, c. 12, s. 5; c. 354, s. 12; 1995, c. 17, s. 3; 1998-98, s. 69; 2006-162, s. 3(a); 2012-79, s. 1.14(b); 2013-157, s. 27.)

§ 105-130.3. (Effective for taxable years beginning on or after January 1, 2016, and before January 1, 2017) Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State at the rate of four percent (4%). An S Corporation is not subject to the tax levied in this section. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 1287, s. 4; 1975, c. 275, s. 4; 1977, c. 657, s. 4; 1979, c. 179, s. 2; 1981, c. 15; 1983, c. 713, s. 69; 1987, c. 622, s. 8; 1987 (Reg. Sess., 1988), c. 1089, s. 5; 1989, c. 728, s. 1.33; 1991, c. 689, s. 258; 1996, 2nd Ex. Sess., c. 13, s. 2.1; 2013-316, ss. 2.1(a), 2.2(a); 2015-241, s. 32.13(a).)

§ 105-130.3. (Effective for taxable years beginning on or after January 1, 2017, and before January 1, 2019) Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State at the rate of three percent (3%). An S Corporation is not subject to the tax levied in this section. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 1287, s. 4; 1975, c. 275, s. 4; 1977, c. 657, s. 4; 1979, c. 179, s. 2; 1981, c. 15; 1983, c. 713, s. 69; 1987, c. 622, s. 8; 1987 (Reg. Sess., 1988), c. 1089, s. 5; 1989, c. 728, s. 1.33; 1991, c. 689, s. 258; 1996, 2nd Ex. Sess., c. 13, s. 2.1; 2013-316, ss. 2.1(a), 2.2(a); 2015-241, s. 32.13(a); 2017-57, s. 38.5(a).)

§ 105-130.3. (Effective for taxable years beginning on or after January 1, 2019) Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State at the rate of two and one-half percent (2.5%). An S Corporation is not subject to the tax levied in this section. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 1287, s. 4; 1975, c. 275, s. 4; 1977, c. 657, s. 4; 1979, c. 179, s. 2; 1981, c. 15; 1983, c. 713, s. 69; 1987, c. 622, s. 8; 1987 (Reg. Sess., 1988), c. 1089, s. 5; 1989, c. 728, s. 1.33; 1991, c. 689, s. 258; 1996, 2nd Ex. Sess., c. 13, s. 2.1; 2013-316, ss. 2.1(a), 2.2(a); 2015-241, s. 32.13(a); 2017-57, s. 38.5(b).)

§ 105-130.3A: Expired.

§ 105-130.3B: Expired pursuant to its own terms, effective for taxable years beginning on or after January 1, 2011.

§ 105-130.3C: Repealed by Session Laws 2017-57, s. 38.5(c), effective June 28, 2017.

§ 105-130.4. (Effective for taxable years beginning before January 1, 2017) Allocation and apportionment of income for corporations.

(a) As used in this section, unless the context otherwise requires:

(1) "Apportionable income" means all income that is apportionable under the United States Constitution.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) **(Repealed effective for taxable years beginning on or after January 1, 2018)** "Excluded corporation" means any corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.

(5) "Nonapportionable income" means all income other than apportionable income.

(6) **(Repealed effective for taxable years beginning on or after January 1, 2018)** "Public utility" means any corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.

(7) "Sales" means all gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

e. **(Effective for taxable years beginning on or after January 1, 2016)** The portion of receipts from financial swaps and other similar financial derivatives that represents the notional principal amount that generates the cash flow traded in the swap agreement.

f. **(Effective for taxable years beginning on or after January 1, 2016)** Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a), (3b), and dividends excluded for federal tax purposes.

(8) "Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.

(9) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.

(c) Rents and royalties from real or tangible personal property, gains and losses, interest, dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonapportionable income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d) (1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

a. If and to the extent that the property is utilized in this State, or

b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e) (1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if

a. The property had a situs in this State at the time of the sale, or

b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.

(3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.

(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses.

(g) (1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:

a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or

b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) The income less related expenses from any other activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments is located in this State.

(i) **(Effective for taxable years beginning before January 1, 2016)** All apportionable income of corporations other than public utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus one.

(i) **(Effective for taxable years beginning on or after January 1, 2016 and before January 1, 2017)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus two.

(i) **(Effective for taxable years beginning on or after January 1, 2017 and before January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus four times the sales factor, and the denominator of which is six. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus three.

(i) **(Effective for taxable years beginning on or after January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

(j) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute apportionable income. Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(k) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during the income year. All compensation paid to general executive officers and all compensation paid in connection with nonapportionable income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.

(2) Compensation is paid in this State if:

a. The individual's service is performed entirely within the State; or

b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(*l*) (1) **(See editor's note)** The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State.

(m) All apportionable income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

"Railway operating revenue" from business done within this State shall mean "railway operating revenue" from business wholly within this State, plus the equal mileage proportion within this State of each item of "railway operating revenue" received from the interstate business of the company. "Equal mileage proportion" shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. "Interstate business" shall mean "railway operating revenue" from the interstate transportation of persons or property into, out of, or through this State. If the Secretary of Revenue finds, with respect to any particular company, that its accounting

records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

(n) All apportionable income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) All apportionable income of a motor carrier of property shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company hauling property for a charge or traveling on a scheduled route.

(p) All apportionable income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) All apportionable income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (*l*) of this section.

(r) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of an excluded corporation and of all other public utilities shall

be apportioned by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

(s) **(Effective for taxable years beginning before January 1, 2016)** All apportionable income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(s) **(Effective for taxable years beginning on or after January 1, 2016)** All apportionable income of an air transportation corporation or a water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. A qualified air freight forwarder shall use the revenue ton mile fraction of its affiliated air carrier. The following definitions apply in this subsection:

(1) Air carrier. – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.

(2) Air transportation corporation. – One or more of the following:

a. An air carrier that carries any combination of passengers or property of any kind.

b. A qualified air freight forwarder.

(3) Qualified air freight forwarder. – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.

(4) Revenue ton mile. – One ton of passengers, freight, mail, or other cargo carried one mile by the air transportation corporation or water transportation corporation by aircraft, motor vehicle, or vessel. In making this computation, a passenger is considered to weigh two hundred pounds.

(s1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of a qualified capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (*l*) of this section. A "qualified capital intensive corporation" is a corporation that satisfies all of the conditions of this subsection. A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a qualified capital intensive corporation. If the corporation fails to invest one billion dollars ($1,000,000,000) in private funds within nine years as required by subdivision (2) of this subsection, the benefit of this subsection expires and the corporation must apportion income as it would otherwise be required to do under this section absent this subsection. The conditions are:

(1) The corporation's property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%) or the corporation's average property factor for the preceding three years as a percentage of the

average sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factors, for the preceding three years exceeds seventy-five percent (75%).

(2) The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least one billion dollars ($1,000,000,000) in private funds to construct a facility in this State within nine years after the time that construction begins. For the purposes of this subsection, costs of construction include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.

(3) The corporation maintains the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the investment required under subdivision (2) of this subsection.

(4) The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.

(5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, the wage standard that must be satisfied is the one established under G.S. 105-164.3(33c)a.

(6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if it satisfies the provisions of G.S. 105-164.3(33c)c.

(t) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. For applicability, see Editor's note.

(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation

authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return.

(t2) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5; 2001-327, s. 1(c); 2002-126, s. 30G.1(a); 2003-349, ss. 1.2, 1.3; 2003-416, ss. 5(a)-5(h); 2004-170, s. 15; 2005-435, s. 53; 2007-491, ss. 2, 12; 2009-54, ss. 1, 2, 6; 2009-445, ss. 4, 5; 2010-89, s. 2(a), (b); 2011-330, s. 5; 2013-414, s. 2(b); 2015-241, s. 32.14(a)-(d); 2015-268, s. 10.1(c); 2016-5, ss. 1.3(a), 1.6(a), 5.5(b); 2016-92, s. 1.1.)

§ 105-130.4. (Effective for taxable years beginning on or after January 1, 2017) Allocation and apportionment of income for corporations.

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

(1) Apportionable income. – All income that is apportionable under the United States Constitution, including income that arises from either of the following:

a. Transactions and activities in the regular course of the taxpayer's trade or business.

b. Tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

(2) Business activity. – Any activity by a corporation that would establish nexus, except as limited by 15 U.S.C. § 381.

(3) Casual sale of property. – The sale of any property that was not purchased, produced, or acquired primarily for sale in the corporation's regular trade or business.

(4) Commercial domicile. – The principal place from which the trade or business of the taxpayer is directed or managed.

(5) Compensation. – Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Nonapportionable income. – All income other than apportionable income.

(7) Sales. – All gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

e. **(Effective for taxable years beginning on or after January 1, 2016)** The portion of receipts from financial swaps and other similar financial

derivatives that represents the notional principal amount that generates the cash flow traded in the swap agreement.

f. **(Effective for taxable years beginning on or after January 1, 2016)** Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a), (3b), and dividends excluded for federal tax purposes.

(8) State. – A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Multistate Corporations. – A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if either of the following applies:

(1) The corporation's business activity in that state subjects it to a net income tax or a tax measured by net income.

(2) That state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction.

(c) Nonapportionable Income. – Rents and royalties from real or tangible personal property, gains and losses, interest, dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonapportionable income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d) Rents and Royalties. – Net rents and royalties are allocable to this State as follows:

(1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

a. If and to the extent that the property is utilized in this State, or

b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e) Gains and Losses. – Gains and losses are allocable to this State as follows:

(1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if

a. The property had a situs in this State at the time of the sale, or

b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.

(3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.

(f) Interest and Net Dividends. – Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses.

(g) Intangible Property. – Intangible property is allocable to this State as follows:

(1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:

a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or

b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) Other Income. – The income less related expenses from any other activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments is located in this State.

(i) **(Effective for taxable years beginning before January 1, 2016)** Apportionable Income. – All apportionable income of corporations other than public utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus one.

(i) **(Effective for taxable years beginning on or after January 1, 2016, and before January 1, 2017)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the

payroll factor plus three times the sales factor, and the denominator of which is five. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus two.

(i) **(Effective for taxable years beginning on or after January 1, 2017, and before January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus four times the sales factor, and the denominator of which is six. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus three.

(i) **(Effective for taxable years beginning on or after January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

(j) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute apportionable income. Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(k) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The payroll factor is a fraction, the numerator of which is the total amount paid

in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during the income year. All compensation paid to general executive officers and all compensation paid in connection with nonapportionable income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.

(2) Compensation is paid in this State if:

a. The individual's service is performed entirely within the State; or

b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(*l*) (1) **(See editor's note)** The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if any of the following occur:

a. The receipts are from real or tangible personal property located in this State, and includes receipts from incidental services sold as part of, or in connection with, the sale of tangible personal property in this State.

b. The receipts are from intangible property and are received from sources within this State.

c. The receipts are from services and the income-producing activities are in this State. For the purposes of this subdivision, an "income-producing activity" means an activity directly performed by the taxpayer or its agents for the ultimate purpose of generating the sale of the service. Receipts from income-producing activities performed within and

without this State are attributed to this State in proportion to the income-producing activities performed in this State to total income-producing activities performed everywhere that generate the sale of service.

(m) Railroad Company. – All apportionable income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with generally accepted accounting principles.

If the Secretary of Revenue finds, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

The following definitions apply in this subsection:

(1) Equal mileage proportion. – The proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue.

(2) Interstate business. – Railroad operating revenue from the interstate transportation of persons or property into, out of, or through this State.

(3) Railway operating revenue from business done within this State. – Railroad operating revenue from business wholly within this State, plus the equal mileage proportion within this State of each item of railway operating revenue received from the interstate business of the company.

(n) **(Repealed effective for taxable years beginning on or after January 1, 2017)** All apportionable income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the

amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) Motor Carrier. – All apportionable income of a motor carrier of property or a motor carrier of people shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company based upon one of the following:

(1) Miles on a scheduled route.
(2) Miles hauling property for a charge.
(3) Miles carrying passengers for a fare.

(p) **(Repealed effective for taxable years beginning on or after January 1, 2017)** All apportionable income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) **(Repealed effective for taxable years beginning on or after January 1, 2017)** All apportionable income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (*l*) of this section.

(r) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of an excluded corporation and of all other public utilities shall be apportioned by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

The following definitions apply in this subsection:

(1) Excluded corporation. – Any corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.
(2) Public utility. – Any corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.

(s) **(Effective for taxable years beginning before January 1, 2016)** All apportionable income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(s) **(Effective for taxable years beginning on or after January 1, 2016)** Transportation Corporation. – All apportionable income of an air transportation corporation or a water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. A qualified air freight forwarder shall use the revenue ton mile fraction of its affiliated air carrier. The following definitions apply in this subsection:

(1) Air carrier. – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.

(2) Air transportation corporation. – One or more of the following:

a. An air carrier that carries any combination of passengers or property of any kind.

b. A qualified air freight forwarder.

(3) Qualified air freight forwarder. – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.

(4) Revenue ton mile. – One ton of passengers, freight, mail, or other cargo carried one mile by the air transportation corporation or water transportation corporation by aircraft, motor vehicle, or vessel. In making this computation, a passenger is considered to weigh two hundred pounds.

(s1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of a qualified capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (*l*) of this section. A "qualified capital intensive corporation" is a corporation that satisfies all of the conditions of this subsection. A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a qualified capital intensive corporation. If the corporation fails to invest one billion dollars ($1,000,000,000) in private funds within nine years as required by subdivision (2) of this subsection, the benefit of this subsection expires and the corporation must apportion income as it would otherwise be required to do under this section absent this subsection. The conditions are:

(1) The corporation's property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%) or the corporation's average property factor for the preceding three years as a percentage of the average sum of the factors in the formula set out in subsection (i) of this section,

including the doubling of the sales factors, for the preceding three years exceeds seventy-five percent (75%).

(2) The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least one billion dollars ($1,000,000,000) in private funds to construct a facility in this State within nine years after the time that construction begins. For the purposes of this subsection, costs of construction include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.

(3) The corporation maintains the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the investment required under subdivision (2) of this subsection.

(4) The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.

(5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, the wage standard that must be satisfied is the one established under G.S. 105-164.3(33c)a.

(6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if it satisfies the provisions of G.S. 105-164.3(33c)c.

(s2) Pipeline Company. – Receipts from transportation of a petroleum-based liquids pipeline company shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of barrel miles in this State during the tax year and the denominator of which is the total number of barrel miles everywhere during the tax year. For purposes of this section, the term "barrel mile" means one barrel of liquid property transported one mile.

(t) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. For applicability, see Editor's note.

(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative

method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return.

(t2) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5; 2001-327, s. 1(c); 2002-126, s. 30G.1(a); 2003-349, ss. 1.2, 1.3; 2003-416, ss. 5(a)-5(h); 2004-170, s. 15; 2005-435, s. 53; 2007-491, ss. 2, 12; 2009-54, ss. 1, 2, 6; 2009-445, ss. 4, 5; 2010-89, s. 2(a), (b); 2011-330, s. 5; 2013-414, s. 2(b); 2015-241, ss. 32.14(a)-(d); 2015-268, s. 10.1(c); 2016-5, ss. 1.3(a), 1.6(a), 5.5(b); 2016-92, s. 1.1; 2017-204, s. 1.5(a); 2018-5, s. 38.2(c); 2018-97, s. 11.2(a).)

§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

(1) Taxes based on or measured by net income by whatever name called and excess profits taxes.
(2) Interest paid in connection with income exempt from taxation under this Part.
(3) The contributions deduction allowed by the Code.
(4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963.
(5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.
(6) Any amount allowed as a net operating loss deduction under the Code.
(7) Repealed by Session Laws 2001-327, s. 3(a), effective for taxable years beginning on or after January 1, 2001.
(8) Repealed by Session Laws 1987, c. 778, s. 2.
(9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.

(10) The total amounts allowed under this Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Chapter the apportionment factor used by it in determining the amount of its apportioned income.

(11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.

(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158.

(13) Repealed by Session Laws 2001-427, s. 4(b), effective for taxable years beginning on or after January 1, 2002.

(14) Royalty payments required to be added by G.S. 105-130.7A, to the extent deducted in calculating federal taxable income.

(15) through (15b) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.

(17) **(Repealed effective for taxable years beginning on or after January 1, 2018.)** The amount excluded from gross income under section 199 of the Code.

(18) Repealed by Session Laws 2006-220, s. 1, effective for taxable years beginning on and after January 1, 2007.

(19) The dividend paid deduction allowed under the Code to a captive REIT, as defined in G.S. 105-130.12.

(20) Repealed by Session Laws 2018-5, s. 38.2(d), effective June 12, 2018.

(21) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.

(22) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation.

(23), (23a) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(24) The amount required to be added under G.S. 105-130.5B when the State decouples from federal accelerated depreciation and expensing.

(25) **(Effective for taxable years beginning on or after January 1, 2016)** The amount of net interest expense to a related member as determined under G.S. 105-130.7B.

(26) The amount of gain that would be included for federal income tax purposes without regard to section 1400Z-2(b) of the Code. The adjustment made in this subsection does not result in a difference in basis of the affected assets for State and federal income tax purposes. The purpose of this subdivision is to decouple from the deferral of gains reinvested into an Opportunity Fund available under federal law.

(27) The amount of gain that would be included in the taxpayer's federal taxable income but for the step-up in basis under section 1400Z-2(c) of the Code. The purpose of this subdivision is to decouple from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law.

(28) The amount deducted under section 250 of the Code.

(29) The amount deducted under section 965(c) of the Code.

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

(1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States.

(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State.

c. A hospital authority created under G.S. 131E-17.

(2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State.

(3) Repealed by Session Laws 2003-349, s. 1.1, effective January 1, 2003.

(3a) **(Effective for taxable years beginning before January 1, 2016)** Dividends treated as received from sources outside the United States as determined under section 862 of the Code, net of related expenses, to the extent included in federal taxable income. Notwithstanding the proviso in subdivision (c)(3) of this section, the netting of related expenses shall be calculated in accordance with subdivision (c)(3) of this section and G.S. 105-130.6A.

(3a) **(Effective for taxable years beginning on or after January 1, 2016)** Dividends treated as received from sources outside the United States as

determined under section 862 of the Code, net of related expenses, to the extent included in federal taxable income. Notwithstanding the proviso in subdivision (c)(3) of this section, the netting of related expenses shall be calculated in accordance with subdivision (c)(3) of this section.

(3b) Any amount included in federal taxable income under section 78, 951, 951A, or 965 of the Code, net of related expenses.

(4) **(Effective for taxable years beginning before January 1, 2015)** Losses in the nature of net economic losses sustained by the corporation in any or all of the 15 preceding years pursuant to the provisions of G.S. 105-130.8. A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable and apportionable net economic loss only from total income allocable and apportionable to this State pursuant to the provisions of G.S. 105-130.8.

(4) **(Effective for taxable years beginning on or after January 1, 2015 and expiring for taxable years beginning on or after January 1, 2030)** Any unused portion of a net economic loss as allowed under G.S. 105-130.8A(e). This subdivision expires for taxable years beginning on or after January 1, 2030.

(4a) **(Effective for taxable years beginning on or after January 1, 2015)** A State net loss as allowed under G.S. 105-130.8A. A corporation may deduct its allocable and apportionable State net loss only from total income allocable and apportionable to this State.

(5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9.

(6) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Amortization in excess of depreciation allowed under the Code on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10.

(7) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax purposes.

(8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.

(9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.

(10) Repealed by Session Laws 1987, c. 778, s. 2.

(11) **(Effective for taxable years beginning before January 1, 2016)** If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.

(11) **(Effective for taxable years beginning on or after January 1, 2016)** If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed.

(12) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.

(13) **(Repealed effective for taxable years beginning on or after January 1, 2016)** The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:

a. "International banking facility" shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:

1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;

2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or

3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.

d. For the purposes of this subsection the term "foreign person" means:

1. An individual who is not a resident of the United States;
2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;
3. A foreign branch of a domestic corporation (including the taxpayer);
4. A foreign government or an international organization or an agency of either, or
5. An international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Code.

(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 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.

(15) **(Repealed effective for taxable years beginning on or after January 1, 2016)** The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.

(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158.

(17) To the extent included in federal taxable income, 911 charges imposed under G.S. 143B-1403 and remitted to the 911 Fund under that section.

(18) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement

creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials.

(19) **(Repealed effective for taxable years beginning on or after January 1, 2016)** To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(20) Royalty payments received from a related member who added the payments to income under G.S. 105-130.7A for the same taxable year.

(21) through (21b) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(22) **(Repealed effective for taxable years beginning on or after January 1, 2016)** To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(23) A dividend received from a captive REIT, as defined in G.S. 105-130.12.

(24) **(Expiring for taxable years beginning on or after January 1, 2015)** Five percent (5%) of the gross purchase price of a qualified sale of a manufactured home community. A qualified sale is a transfer of land comprising a manufactured home community in a single purchase to a group composed of a majority of the manufactured home community leaseholders or to a nonprofit organization that represents such a group. To be eligible for this deduction, a taxpayer must give notice of the sale to the North Carolina Housing Finance Agency under G.S. 42-14.3.

(25) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code.

(26), (26a) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(27) The amount allowed as a deduction under G.S. 105-130.5B as a result of an add-back for federal accelerated depreciation and expensing.

(28) **(Effective for taxable years beginning on or after January 1, 2016)** The amount of qualified interest expense to a related member as determined under G.S. 105-130.7B.

(29) **(Effective for taxable years beginning on or after January 1, 2017)** To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(30) The amount of gain included in the taxpayer's federal taxable income under section 1400Z-2(a) of the Code to the extent the same income was included in the taxpayer's federal taxable income in a prior taxable year under subdivision (a)(26) of this section. The purpose of this subdivision is to prevent double taxation of income the taxpayer was previously required to include in the calculation of State net income.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

(1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.

(2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this Part.

(3) **(Effective for taxable years beginning before January 1, 2016)** No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b). G.S. 105-130.6A applies to the adjustment for expenses related to dividends received that are not taxed under this Part.

(3) **(Effective for taxable years beginning on or after January 1, 2016)** No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b). For dividends received that are not taxed under this Part, the adjustment for expenses may not exceed an amount equal to fifteen percent (15%) of the dividends.

(4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.

(5) **(Repealed effective for taxable years beginning on or after January 1, 2016)** A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income.

(d) Repealed by Session Laws 1987, c. 778, s. 3.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

(f) Expired. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4; 1975, c. 764, s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c. 720, s. 1; c. 791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3; 1991, c. 598, ss. 3, 10; 1991 (Reg. Sess., 1992), c. 857, s. 1; 1993 (Reg.

Sess., 1994), c. 745, ss. 4, 5; 1995, c. 509, s. 50; 1996, 2nd Ex. Sess., c. 14, ss. 4, 10; 1997-439, s. 1; 1998-98, ss. 1(c), 4, 69; 1998-158, s. 5; 1998-171, s. 7; 1999-333, s. 2; 1999-337, s. 1; 1999-463, Ex. Sess., s. 4.6(b); 2000-140, s. 93.1(a); 2000-173, s. 19(c); 2001-327, ss. 1(d), (e), 3(a), (b); 2001-424, s. 12.2(b); 2001-427, ss. 4(b), 10(a); 2002-72, s. 14; 2002-126, ss. 30C.2(a), 30C.2(c); 2002-136, ss. 1, 4; 2003-284, s. 37A.3; 2003-349, s. 1.1; 2005-1, s. 5.7(b); 2005-276, ss. 35.1(b), 39.1(e); 2006-220, s. 1; 2007-323, ss. 31.18(a), (b); 2007-383, s. 5; 2007-397, s. 13(b); 2008-107, ss. 28.1(c), (d), (g), 28.25(b), 28.27(a); 2008-134, s. 2(b); 2009-451, s. 27A.6(c), (d); 2010-89, s. 1; 2011-5, ss. 2(a), (b), 3(a), (b); 2011-330, s. 11; 2012-79, s. 1.1; 2013-10, ss. 2(a), (b), 3(a), (b); 2013-414, s. 34(a); 2014-3, ss. 1.1(a), 14.3; 2015-6, s. 2.7; 2015-241, ss. 7A.3, 32.13(c), (d); 2016-5, ss. 1.9(a), 5.3(b); 2018-5, ss. 5.6(k), 38.1(b), (e), 38.2(d).)

§ 105-130.5A. Secretary's authority to adjust net income or require a combined return.

(a) Notice. – When the Secretary has reason to believe that any corporation so conducts its trade or business in such manner as to fail to accurately report its State net income properly attributable to its business carried on in the State through the use of transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities, the Secretary may, upon written notice to the corporation, require any information reasonably necessary to determine whether the corporation's intercompany transactions have economic substance and are at fair market value and for the accurate computation of the corporation's State net income properly attributable to its business carried on in the State. The corporation must provide the information requested within 90 days of the date of the notice.

(b) Adjust Net Income. – If upon review of the information provided, the Secretary finds as a fact that the corporation's intercompany transactions lack economic substance or are not at fair market value, the Secretary may redetermine the State net income of the corporation properly attributable to its business carried on in the State under this section by (i) adding back, eliminating, or otherwise adjusting intercompany transactions to accurately compute the corporation's State net income properly attributable to its business carried on in the State, or, if such adjustments are not adequate under the circumstances to redetermine State net income, (ii) requiring the corporation to file a return that reflects the net income on a combined basis of all members of its affiliated group that are conducting a unitary business. The Secretary shall consider and be authorized to use any reasonable method proposed by the corporation for redetermining its State net income attributable to its business carried on in the State. In determining whether the corporation's intercompany transactions lack economic substance or are not at fair market value, the Secretary shall consider each taxable year separately.

(c) Voluntary Redetermination. – In addition to the authority granted under subsection (b) of this section, if the Secretary has reason to believe that any corporation's State net income properly attributable to its business carried on in this State is not accurately reported on a separate return required by this Part because of intercompany transactions, without making a finding that those transactions lack economic substance or

are not at fair market value, the Secretary and the corporation may jointly determine and agree to an alternative filing methodology that accurately reports State net income. The Secretary is authorized to allow any reasonable method for redetermining the corporation's State net income attributable to its business carried on in this State.

(d) Combined Return. – If the Secretary finds as a fact that a combined return is required, the Secretary may, upon written notice to the corporation, require the corporation to submit the combined return, and the corporation shall submit the combined return within 90 days of the date of the notice. The submission by the corporation of the combined return required by the Secretary shall not be deemed to be a return or construed as an agreement by the corporation that an assessment based on the combined return is correct or that additional tax is due by the Secretary's deadline for submitting the combined return. The Secretary or the corporation may propose a combination of fewer than all members of the unitary group, and the Secretary shall be authorized to consider whether such proposed combination is a reasonable means of redetermining State net income; provided, however, the Secretary shall not require a combination of fewer than all members of the unitary group without the consent of the corporation.

(e) Written Statement of Findings. – If the Secretary makes an adjustment or requires a combined return under this section, the Secretary shall provide the corporation with a written statement containing detail of the facts, circumstances, and reasons for which the Secretary has found as a fact that the corporation did not accurately report its State net income properly attributable to its business carried on in the State and the Secretary's proposed method for computation of the corporation's State net income no later than 90 days following the issuance of a proposed assessment as provided in this section.

(f) Members of Affiliated Group. – The Secretary may require a combined return under this section regardless of whether the members of the affiliated group are or are not doing business in this State.

(g) Economic Substance. – A transaction has economic substance if (i) the transaction, or the series of transactions of which the transaction is a part, has one or more reasonable business purposes other than the creation of State income tax benefits and (ii) the transaction, or the series of transactions of which the transaction is a part, has economic effects beyond the creation of State income tax benefits. In determining whether a transaction has economic substance, all of the following apply:

(1) Reasonable business purposes and economic effects include, but are not limited to, any material benefit from the transaction other than State income tax benefits not allowable under subdivision (3) of this subsection.

(2) In determining whether to require a combined return, whether the transaction has economic effects beyond the creation of State income tax benefits may be satisfied by demonstrating material business activity of the entities involved in the transaction.

(3) If State income tax benefits resulting from a transaction, or a series of transactions of which the transaction is a part, are consistent with legislative intent, such State income tax benefits shall be considered in determining whether such transaction has business purpose and economic substance.

(4) Centralized cash management of an affiliated group as defined in subsection (j) of this section shall not constitute evidence of an absence of economic substance.

(5) Achieving a financial accounting benefit shall not be taken into account as a reasonable business purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of State income tax.

(h) Allocation of Income and Deductions. – In determining whether transactions between members of the affiliated group of entities are not at fair market value, the Secretary shall apply the standards contained in the regulations adopted under section 482 of the Code.

(i) Apportionment. – If the Secretary requires a combined return under this section, the combined State net income of the corporation and the members of the affiliated group of entities shall be apportioned to this State by use of an apportionment formula that accurately reports the State net income properly attributable to the corporation's business carried on in the State and which fairly reflects the apportionment formula in G.S. 105-130.4 applicable to the corporation and each member of the affiliated group included in the combined return.

(j) Affiliated Group Defined. – For purposes of this section, an affiliated group is a group of two or more corporations or noncorporate entities in which more than fifty percent (50%) of the voting stock of each member corporation or ownership interest of each member noncorporate entity is directly or indirectly owned or controlled by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations or noncorporate entities. Nothing in this subsection shall be construed to limit or negate the Secretary's authority to add back, eliminate, or otherwise adjust intercompany transactions involving the listed entities to accurately compute the corporation's State net income properly attributable to its business carried on in the State, as provided in subsection (b) of this section.

The following entities shall not be included in a combined return:

(1) A corporation not required to file a federal income tax return.

(2) An insurance company, other than a captive insurance company, (i) which is subject to tax under Article 8B of this Chapter, (ii) whose premiums are subject to tax under Article 21 of Chapter 58 or a similar tax in another state, (iii) which is licensed as a reinsurance company, (iv) which is a life insurance company as defined in Section 816 of the Code, or (v) which is an insurance company subject to tax imposed by Section 831 of the Code. A "captive insurance company" means an insurer that is part of an affiliated group where the insurer receives more than fifty percent (50%) of its net written premiums or other amounts received as compensation for insurance from members of the affiliated group.

(3) A corporation exempt from taxation under section 501 of the Code.

(4) An S corporation.

(5) A foreign corporation as defined in section 7701 of the Code, other than a domestic branch thereof.

(6) A partnership, limited liability company, or other entity not taxed as a corporation.

(7) A corporation with at least eighty percent (80%) of its gross income from all sources in the tax year being active foreign business income as defined in section 861(c)(1)(B) of the Code in effect as of July 1, 2009.

(k) Proposed Assessment or Refund. – If the Secretary redetermines the State net income of the corporation in accordance with this section by adjusting the State net income of the corporation or requiring a combined return, the Secretary shall issue a proposed assessment or refund upon making such redetermination. The procedures for a proposed assessment or a refund in Article 9 of Chapter 105 shall be applicable to proposed assessments and refunds made under this section.

(l) Penalties. – If a combined return required by this section is not timely submitted by a corporation, then the corporation is subject to the penalties provided in G.S. 105-236(a)(3). Penalties shall not be imposed on an assessment under this section except as expressly authorized in this section and in G.S. 105-236(a)(5)f.

(m) Advice. – A corporation may request in writing from the Secretary specific advice regarding whether a redetermination of the corporation's State net income or a combined return would be required under this section under certain facts and circumstances. The Secretary may request information from the taxpayer that is required to provide the specific advice. The Secretary shall provide the specific advice within 120 days of the receipt of the requested information from the taxpayer. G.S. 105-264 governs the effect of this advice.

(n) Extension. – The Secretary and the taxpayer may extend any time limit contained in this section by mutual agreement.

(o) Other Tax Adjustments. – Nothing in this section shall be construed to limit or negate the Secretary's authority to make tax adjustments as otherwise permitted by law, except that the Secretary shall not make adjustments pursuant to this section that limit a corporation's options for reporting royalty payments under G.S. 105-130.7A.

(p) Appeals. – If the corporation appeals a final determination by the Department under this section to the Office of Administrative Hearings in a contested tax case, the administrative law judge shall review de novo (i) whether the separate income tax returns submitted by the taxpayer fail to report State net income properly attributable to its business carried on in this State through the use of intercompany transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities; (ii) whether the Department's means of determining the corporation's State net income under this section is an appropriate means of determining the corporation's State net income properly attributable to this State; and (iii) if a combined return is required by the Department, whether adjustments other than requiring the corporation to file a return on a combined basis are adequate under the circumstances to redetermine State net income. (2011-390, s. 2; 2011-411, s. 8(a), (b).)

§ 105-130.5B. Adjustments when State decouples from federal accelerated depreciation and expensing.

(a) Special Accelerated Depreciation. – A taxpayer who takes a special accelerated depreciation deduction for property under section 168(k) or 168(n) of the Code must add

to the taxpayer's federal taxable income eighty-five percent (85%) of the amount taken for that year under those Code provisions. A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(b) 2009 Depreciation Exception. – A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction to its federal taxable income for the 2010 taxable year. A taxpayer is allowed to deduct this add-back under subsection (a) of this section as if it were for property placed in service in 2010.

(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code. A taxpayer who places section 179 property in service during a taxable year must add to the taxpayer's federal taxable income eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation for the taxable year. For taxable years 2010, 2011, and 2012, the dollar limitation is two hundred and fifty thousand dollars ($250,000) and the investment limitation is eight hundred thousand dollars ($800,000). For taxable years beginning on or after 2013, the dollar limitation is twenty-five thousand dollars ($25,000) and the investment limitation is two hundred thousand dollars ($200,000).

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(d) Asset Basis. – The adjustments made in this section do not result in a difference in basis of the affected assets for State and federal income tax purposes, except as modified in subsection (e) of this section.

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor has not taken the bonus depreciation deduction on a prior return.

(2) The transferor certifies in writing to the transferee that the transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(g) Tax Basis. – For transactions described in subsections (e) or (f) of this section, federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to the property that has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes. (2013-414, s. 34(b); 2014-3, s. 2.1(a); 2015-2, s. 1.2(a); 2016-6, s. 2(a).)

§ 105-130.6: Repealed by Session Laws 2011-390, s. 1, effective for taxable years beginning on or after January 1, 2012.

§ 105-130.6A. (Repealed effective for taxable years beginning on or after January 1, 2016) Adjustment for expenses related to dividends.

(a) Definitions. – The definitions in G.S. 105-130.2 govern the determination of whether a corporation is a subsidiary or an affiliate of another corporation. In addition, the following definitions apply in this section:

(1) Affiliated group. – A group that includes a corporation, all other corporations that are affiliates or subsidiaries of that corporation, and all other corporations that are affiliates or subsidiaries of another corporation in the group.

(2) Bank holding company. – A holding company with an affiliate that is subject to the privilege tax on banks levied in G.S. 105-102.3.

(3) Dividends. – Dividends received that are not taxed under this Part.

(4) Electric power holding company. – A holding company with an affiliate or a subsidiary that is engaged in the business of producing electric power.

(5) Expense adjustment. – The adjustment required by G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part.

(6) Holding company. – Defined in G.S. 105-120.2.

(b) General Rule. – For corporations other than bank holding companies and electric power holding companies, the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part may not exceed an amount equal to fifteen percent (15%) of the dividends.

(c) Bank Holding Companies. – For bank holding companies the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part may not exceed an amount equal to twenty percent (20%) of the dividends.

(d) Electric Power Holding Companies. – For electric power holding companies, the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part may not exceed an amount equal to fifteen percent (15%) of its total interest expenses.

(e) Cap for Bank Holding Companies. – After calculating the expense adjustment as provided in subsection (c) of this section, each bank holding company must calculate the amount of additional tax that results from the expense adjustments for the holding

company and for every corporation in the holding company's affiliated group for the taxable year. If the expense adjustments result in additional tax exceeding eleven million dollars ($11,000,000) for a taxable year for the affiliated group, the affiliated group may reduce the amount of the expense adjustment so that the resulting additional tax does not exceed this maximum. This maximum applies once to each affiliated group each taxable year, whether or not the group includes more than one bank holding company.

The members of the affiliated group may allocate this reduction among themselves in their discretion. In order to take this reduction, each member of the affiliated group that is required to file a return under this Part and that has dividends for the taxable year must provide a schedule with its return that lists every member of the group that has dividends, the amount of the dividends, and whether the member is a bank holding company. In addition, the schedule must show the expense adjustments for those members whose additional tax as a result of the expense adjustment constitutes the maximum amount. In addition, each member must provide any other documentation required by the Secretary.

If the expense adjustment for an affiliated group is reduced under this subsection, and the return of a member of the group is later changed in a manner that reduces below the maximum the amount of additional tax for the group resulting from the expense adjustment, the Secretary may increase the expense adjustment for any member of the group in order to increase to the maximum the amount of additional tax for the group resulting from the expense adjustment. In this situation, the amount of the increase is considered a forfeited tax benefit with respect to the affiliated group for the purposes of G.S. 105-241.8. The date of the forfeiture is the date of the change that triggers the Secretary's authority to increase the expense adjustment. Any member whose expense adjustment the Secretary increases is liable for interest on the amount of the increase at the rate established under G.S. G.S. 105-241.21 computed from the date the taxes would have been due if the expense adjustment had been calculated correctly on the original return. The amount of the increase and the interest are due 60 days after the date of the forfeiture. A taxpayer that fails to pay the amount of the increase and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) Credits for Bank Holding Companies. – If the affiliated group of which a bank holding company is a member is eligible for the reduction provided in subsection (e) of this section for a taxable year, the affiliated group is also eligible for a credit equal to two million dollars ($2,000,000). If the affiliated group of which a bank holding company is a member is not eligible for the reduction provided in subsection (e) of this section for a taxable year, the affiliated group is eligible for a credit equal to the amount of additional tax that results from its expense adjustments in excess of the amount of additional tax that would result from the expense adjustments if the expense adjustment of any bank holding company in the group were equal to fifteen percent (15%) of the holding company's dividends for that taxable year.

A credit allowed by this subsection may be taken in four equal, annual installments beginning with the later of the following taxable year or the taxpayer's taxable year beginning in 2003. The members of the affiliated group may allocate a credit allowed by this subsection among themselves in their discretion.

(g) Credit for Electric Power Holding Companies. – After calculating the adjustment for expenses related to dividends under G.S. 105-130.5(c)(3), each electric power holding company must calculate the amount of additional tax under this Part that results from the expense adjustment for the taxable year. The electric power holding company is allowed a credit for the following taxable year equal to one-half of this amount of additional tax.

As an alternative to taking this credit against its own tax liability, an electric power holding company may elect to allocate the credit among the members of its affiliated group. In this case, the credit must be taken in four equal installments beginning in the later of the following taxable year or the taxable year for which the taxpayer's final return is due in 2004.

(h) Limitation on Credits. – The credits provided in this section are allowed against the tax levied in this Part and the franchise tax levied in Article 3 of this Chapter. A taxpayer may claim a credit against only one of the taxes against which it is allowed. Each taxpayer must elect the tax against which the credit will be taken when filing the return on which the first installment of the credit is claimed. This election is binding. All installments and carryforwards of the credit must be taken against the same tax.

In order for a member of an affiliated group to take a credit, each member of the affiliated group that is required to file a return under this Part or under Article 3 of this Chapter must attach a schedule to its return that shows for every member of the group the amount of the credit taken by it, the tax against which it is taken, and the amount of the resulting tax. In addition, each member must provide any other documentation required by the Secretary.

A credit allowed in this section may not exceed the amount of tax against which it is taken for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward to succeeding taxable years. (2002-136, s. 2; 2007-491, s. 13; 2013-316, s. 4.1(b); 2013-414, s. 36; 2015-241, s. 32.13(e).)

§ 105-130.7: Repealed by Session Laws 2003-349, s. 1.1, effective January 1, 2003.

§ 105-130.7A. Royalty income reporting option.

(a) Purpose. – Royalty payments received for the use of intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient. Exercising the royalty reporting income option provided in this section does not prevent a taxpayer from having taxable nexus in this State as otherwise provided in this Article and does not permit the recipient of the income to exclude royalty payments from its calculation of sales as defined in G.S. 105-130.4.

(b) Definitions. – The following definitions apply in this section:

(1) Component member. – Defined in section 1563(b) of the Code.

(1a) Intangible property. – Copyrights, patents, and trademarks.

(2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.

(3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.

(4) Related entity. – Any of the following:

a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.

b. A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own in the aggregate at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

c. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Code, if the taxpayer owns at least eighty percent (80%) of the value of the corporation's outstanding stock.

(5) Related member. – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:

a. A related entity.

b. A component member.

c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.

(6) Royalty payment. – Either of the following:

a. Expenses, losses, and costs paid, accrued, or incurred for North Carolina royalties, to the extent the amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Code.

b. Amounts directly or indirectly allowed as deductions under section 163 of the Code, to the extent the amounts are paid, accrued, or incurred for a time price differential charged for the late payment of any expenses, losses, or costs described in this subdivision.

(7) Trademark. – A trademark, trade name, service mark, or other similar type of intangible asset.

(8) Use. – Use of intangible property includes direct or indirect maintenance, management, ownership, sale, exchange, or disposition of the intangible property.

(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member

during the taxable year. This addition is not required for an amount of royalty payments that meets any of the following conditions:

(1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

(2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.

(3) The taxpayer can establish that the related member to whom the amount was paid is organized under the laws of a country other than the United States, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the rate set in G.S. 105-130.3.

(d) Indirect Transactions. – For the purpose of this section, an indirect transaction or relationship has the same effect as if it were direct. (2001-327, s. 1(b); 2003-416, s. 15; 2006-66, s. 24A.3(a); 2006-196, s. 10; 2016-5, s. 1.5.)

§ 105-130.7B. (Effective for taxable years beginning on or after January 1, 2016) Limitation on qualified interest for certain indebtedness.

(a) Limitation. – In determining State net income, a deduction is allowed only for qualified interest expense paid or accrued by the taxpayer to a related member during a taxable year. This section does not limit the Secretary's authority to adjust a taxpayer's net income as it relates to payments to or charges by a parent, subsidiary, or affiliated corporation in excess of fair compensation in an intercompany transaction under G.S. 105-130.5(a)(9).

(b) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) **(Repealed effective for taxable years beginning on or after January 1, 2017)** Adjusted taxable income. – State net income of the taxpayer determined without regard to this section and other adjustments as the Secretary may by rule provide.

(2) Bank. – One or more of the following, or a subsidiary or affiliate of one or more of the following:

a. A bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended.

b. One or more of the following entities incorporated or chartered under the laws of this State, another state, or the United States:

1. A bank. This term has the same meaning as defined in G.S. 53C-1-4.

2. A savings bank. This term has the same meaning as defined in G.S. 54C-4.

3. A savings and loan association. This term has the same meaning as defined in G.S. 54B-4.

4. A trust company. This term has the same meaning as defined in G.S. 53C-1-4.

(3) Net interest expense. – The excess of the interest paid or accrued by the taxpayer to each related member during the taxable year over the amount of interest from each related member includible in the gross income of the taxpayer for the taxable year.

(3a) **(Effective for taxable years beginning before January 1, 2017)** Proportionate share of interest. – The amount of taxpayer's net interest expense paid or accrued directly to or through a related member to an ultimate payer divided by the total net interest expense of all related members that is paid or accrued directly to or through a related member to the same ultimate payer, multiplied by the interest paid or accrued to a person who is not a related member by the ultimate payer. Any amount that is distributed, paid, or accrued directly or through a related member that is not treated as interest under this Part does not qualify.

(3a) **(Effective for taxable years beginning on or after January 1, 2017)** Proportionate share of interest. – The amount of taxpayer's net interest expense paid or accrued directly to or through a related member to an ultimate payer divided by the total net interest expense of all related members that is paid or accrued directly to or through a related member to the same ultimate payer, multiplied by the interest paid or accrued to a person who is not a related member by the ultimate payer. Any amount that is distributed, paid, or accrued directly or through a related member that is not treated as interest under this Part does not qualify. In determining whether a nominal debt instrument creates deductible interest allowable under this section, the Secretary will not apply the covered debt instrument rules contained in the regulations promulgated under section 385 of the Code.

(4) **(Effective for taxable years beginning before January 1, 2017)** Qualified interest expense. – The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the greater of (i) fifteen percent (15%) of the taxpayer's adjusted taxable income or (ii) the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to interest paid or accrued to a related member if one or more of the following applies:

a. The State imposes an income tax on the interest income of the related member under this Article.

b. Another state imposes an income tax or gross receipts tax on the interest income of the related member. Interest amounts eliminated by combined or consolidated return requirements do not qualify as interest that is subject to tax under this sub-subdivision.

c. The related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States, and that country taxes the interest income at a rate equal to or greater than G.S. 105-130.3.

d. The related member is a bank.

(4) **(Effective for taxable years beginning on or after January 1, 2017)** Qualified interest expense. – The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to interest paid or accrued to a related member if one or more of the following applies:

a. The State imposes an income tax on the interest income of the related member under this Article.

b. Another state imposes an income tax or gross receipts tax on the interest income of the related member. Interest amounts eliminated by combined or consolidated return requirements do not qualify as interest that is subject to tax under this sub-subdivision.

c. The related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States, and that country taxes the interest income at a rate equal to or greater than G.S. 105-130.3.

d. The related member is a bank.

(5) Ultimate payer. – A related member that receives or accrues interest from related members directly or through a related member and pays or accrues interest to a person who is not a related member. (2015-241, s. 32.13(f); 2016-5, ss. 1.8(a), (b); 2017-204, ss. 1.6(a), (b).)

§ 105-130.8. (Repealed effective for taxable years beginning on or after January 1, 2015) Net economic loss.

(a) Net economic losses sustained by a corporation in any or all of the 15 preceding income years shall be allowed as a deduction to the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year is to grant some measure of relief to the corporation that has incurred economic misfortune or is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as defined in this section.

(2) The net economic loss for any year means the amount by which allowable deductions for the year other than prior year losses exceed income from all sources in the year including any income not taxable under this Part.

(3) Any net economic loss of prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that the loss carried forward from the prior years exceeds any income not taxable under this Part received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, only that proportionate part of the net economic loss of a prior year shall be deductible from total income

allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonapportionable income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Part. The amount of the income item considered income not taxable under this Part is determined after subtracting related expenses for which a deduction was allowed under this Part.

(6) No loss shall either directly or indirectly be carried forward more than 15 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine an item originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of net economic loss that can be carried forward to a taxable year that remains open under the statute of limitations. (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1998-98, s. 69; 1998-171, ss. 6, 8; 2002-136, s. 3; 2003-416, s. 5(i); 2014-3, s. 1.1(b).)

§ 105-130.8A. (Effective for taxable years beginning on or after January 1, 2015) Net loss provisions.

(a) State Net Loss. – A taxpayer's State net loss for a taxable year is the amount by which allowable deductions for the year, other than prior year losses, exceed gross income under the Code for the year adjusted as provided in G.S. 105-130.5. In the case of a corporation that has income from business activity within and without this State, the loss must be allocated and apportioned to this State in the year of the loss in accordance with G.S. 105-130.4.

(b) Deduction. – A taxpayer may carry forward a State net loss the taxpayer incurred in a prior taxable year and deduct it in the current taxable year, subject to the limitations in this subsection:

(1) The loss was incurred in one of the preceding 15 taxable years.

(2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.

(c) Mergers and Acquisitions. – The Secretary must apply the standards contained in regulations adopted under sections 381 and 382 of the Code in determining the extent to which a loss survives a merger or an acquisition.

(d) Administration. – A taxpayer claiming a deduction under this section must maintain and make available for inspection by the Secretary all records necessary to

determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

(e) (Expires for taxable years beginning on or after January 1, 2030) Net Economic Loss Carryforward. – For taxable years beginning before January 1, 2015, a taxpayer is allowed a net economic loss as calculated under G.S. 105-130.8. In determining and verifying the amount of a net economic loss incurred or carried forward for taxable years beginning before January 1, 2015, the provisions of G.S. 105-130.8 apply. Any unused portion of a net economic loss carried forward to taxable years beginning on or after January 1, 2015, is administered in accordance with this section. This subsection expires for taxable years beginning on or after January 1, 2030. (2014-3, s. 1.1(c).)

§ 105-130.9. Contributions.

Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:

(1) Charitable contributions as defined in section 170(c) of the Code, exclusive of contributions allowed in subdivision (2) of this section, shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.

(2) Contributions by any corporation to the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and contributions or gifts by any corporation to educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the words "educational institution" shall mean only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The words "educational institution" shall be deemed to include all of such institution's departments, schools and colleges, a group of "educational institutions" and an organization (corporation, trust, foundation, association or other entity) organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the sole benefit of an "educational institution" or group of "educational institutions."

(3) Corporations allocating a part of their total net income outside North Carolina under the provisions of G.S. 105-130.4 shall deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under

subdivisions (1) and (2) of this section or made through North Carolina offices or branches of other donees qualified under the above-mentioned subdivisions of this section; provided, such deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section shall be limited in amount to five percent (5%) of the total income allocated to North Carolina as computed without the benefit of this deduction for contributions.

(4) The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10). (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 1175, s. 1; 1973, c. 1287, s. 4; 1983, c. 713, s. 82; c. 793, s. 2; 1995, c. 370, s. 4; 2006-66, s. 24.18(b); 2011-330, s. 36.)

§ 105-130.10. (Repealed effective for taxable years beginning on or after January 1, 2016) Amortization of air-cleaning devices, waste treatment facilities and recycling facilities.

In lieu of any depreciation allowance, at the option of the corporation, a deduction shall be allowed for the amortization, based on a period of 60 months, of the cost of:

(1) Any air-cleaning device, 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, industrial waste, or other polluting materials or substances into the outdoor atmosphere or streams, lakes, rivers, or coastal waters. The deduction provided herein shall apply also to the facilities or equipment of private or public utilities built and installed primarily for the purpose of providing sewer service to residential and outlying areas. The deduction provided for in this subdivision shall be allowed by the Secretary of Revenue only upon the condition that the corporation claiming such allowance shall furnish to the Secretary a certificate from the Department of Environmental Quality 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 the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or other pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such construction, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, construction, 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.

(2) Purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste, or for the purpose of reducing the volume of hazardous waste generated. The deduction provided for in this subdivision shall be allowed by the Secretary of Revenue only upon the condition that the corporation claiming such allowance shall furnish to the Secretary a certificate from the Department of Environmental Quality certifying that the Department of Environmental Quality has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environmental Quality, and that recycling or resource recovering is the primary purpose of the facility or equipment. (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 817; 1973, c. 476, s. 193; c. 1262, s. 23; 1975, c. 764, s. 3; 1977, c. 771, s. 4; 1981, c. 704, s. 19; 1987, c. 804, s. 4; 1989, c. 148, s. 2; c. 727, ss. 218(40), 219(28); 1997-443, s. 11A.119(a); 2015-241, ss. 14.30(u), 32.13(c).)

§ 105-130.10A. Amortization of equipment mandated by OSHA.

(a) In lieu of any depreciation allowance, at the option of the corporation, a deduction shall be allowed for the amortization, based on a period of 60 months, of the cost of any equipment mandated by the Occupational Safety and Health Act (OSHA), including the cost of planning, acquiring, constructing, modifying, and installing said equipment.

(b) For the purposes of this section and G.S. 105-147(13)d, the term "equipment mandated by the Occupational Safety and Health Act" is any tangible personal property and other buildings and structural components of buildings, which is acquired, constructed, reconstructed, modified, or erected after January 1, 1979; and which the taxpayer must acquire, construct, install, or make available in order to comply with the occupational safety and health standards adopted and promulgated by the United States Secretary of Labor or the Commissioner of Labor of North Carolina, and the term "occupational safety and health standards" includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the United States Secretary of Labor, promulgated as provided by the Occupational Safety and Health Act of 1970, (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950) and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the Occupational Safety and Health Act of 1970 or any alternative rule, regulation or

standard promulgated by the Commissioner of Labor of North Carolina as provided in G.S. 95-131. (1979, c. 776, s. 1.)

§ 105-130.11. Conditional and other exemptions.

(a) Exempt Organizations. – Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Part.

(1) Fraternal beneficiary societies, orders or associations
   a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
   b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.

(2) Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes.

(3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

(8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them.

(9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158.

   Nothing in this subdivision shall be construed to exempt any cooperative, mutual association, or other organization from an income tax on net income that has not been refunded to patrons on a patronage basis and distributed either in cash, stock, or certificates, or in some other manner that discloses the amount of each patron's refund. Provided, in arriving at net income for purposes of this subdivision, no deduction shall be allowed for dividends paid on capital stock. Patronage refunds made after the close of the taxable year and on or before the

fifteenth day of the ninth month following the close of the taxable year are considered as to be made on the last day of the taxable year to the extent the allocations are attributable to income derived before the close of the year; provided, that no stabilization or marketing organization that handles agricultural products for sale for producers on a pool basis is considered to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool have been sold and the pool has been closed; provided, further, that a pool is not considered closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. These cooperatives and other organizations shall file an annual information return with the Secretary on forms to be furnished by the Secretary and shall include the names and addresses of all persons, patrons, or shareholders whose patronage refunds amount to ten dollars ($10.00) or more.

(10) Insurance companies paying the tax on gross premiums as specified in G.S. 105-228.5.

(11) Corporations or organizations, such as condominium associations, homeowner associations, or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance, or landscaping of the common areas and facilities owned by the corporation or organization or its members situated contiguous to the houses, apartments, or other dwellings or for the management, operation, preservation, maintenance, and repair of the houses, apartments, or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of the corporation or organization inures (other than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person.

(b) Unrelated Business Income. – Except as provided in this subsection, an organization described in subdivision (a)(1), (3), (4), (5), (6), (7), (8), or (9) of this section and any organization exempt from federal income tax under the Code is subject to the tax provided in G.S. 105-130.3 on its unrelated business taxable income, as defined in section 512 of the Code, adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net income derived from any of the following:

(1) Research performed by a college, university, or hospital.

(2) Research performed for the United States or its instrumentality or for a state or its political subdivision.

(3) Research performed by an organization operated primarily to carry on fundamental research, the results of which are freely available to the general public.

(4) **(Effective for taxable years beginning on or after January 1, 2018)** Amounts paid or incurred by an organization that is exempt from federal income tax under section 501(c)(3) of the Code for a parking facility that would otherwise be included as unrelated business income under section 512(a)(7) of the Code.

(c) Homeowner Association Income. – An organization described in subdivision (a)(11) of this section is subject to the tax provided in G.S. 105-130.3 on its gross income other than membership income less the deductions allowed by this Article that are directly connected with the production of the gross income other than membership income. The term "membership income" means the gross income from assessments, fees, charges, or similar amounts received from members of the organization for expenditure in the preservation, maintenance, and management of the common areas and facilities of or the residential units in the condominium or housing development.

(d) Real Estate Mortgage Investment Conduits. – An entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from the tax imposed under this Part, except that any net income derived from a prohibited transaction, as defined in section 860F of the Code, is taxable to the real estate mortgage investment conduit under G.S. 105-130.3 and G.S. 105-130.3A, subject to the adjustments provided in G.S. 105-130.5. This subsection does not exempt the holders of a regular or residual interest in a real estate mortgage investment conduit as defined in section 860G of the Code from any tax on the income from that interest. (1939, c. 158, s. 314; 1945, c. 708, s. 4; c. 752, s. 3; 1949, c. 392, s. 3; 1951, c. 937, s. 1; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1053, s. 4; 1975, c. 19, s. 28; c. 591, s. 2; 1981, c. 450, s. 2; 1983, c. 28, s. 1; c. 31; 1985 (Reg. Sess., 1986), c. 826, s. 5; 1991 (Reg. Sess., 1992), c. 921, s. 1; 1993, c. 494, s. 2; 1998-98, ss. 1(b), 69; 2018-5, s. 38.2(i).)

§ 105-130.12. Real estate investment trusts.

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

(1) Captive REIT. – A REIT whose shares or certificates of beneficial interest are not regularly traded on an established securities market and are owned or controlled, at any time during the last half of the tax year, by a person that is subject to tax under this Part and is not a REIT or a listed Australian property trust.

(2) Own or control. – To own or control directly, indirectly, beneficially, or constructively more than fifty percent (50%) of the voting power or value of an entity. The attribution rules of section 318 of the Code, as modified by section 856(d)(5) of the Code, apply in determining ownership and control.

(3) REIT. – A trust or another entity that qualifies as a real estate investment trust under section 856 of the Code.

(b) Tax. – The income of a REIT is taxable under this Part in accordance with the Code, unless the REIT is a captive REIT. A captive REIT is required to add to its federal taxable income the amount of a dividend paid deduction allowed under the Code, as provided in G.S. 105-130.5. (1963, c. 1169, s. 2; 1967, c. 110, s. 3; 1971, c. 820, s. 2; 1973, c. 476, s. 193; 1983, c. 713, s. 74; 1998-98, s. 69; 2007-323, s. 31.18(c).)

§ 105-130.13: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1089, s. 2; as amended by Session Laws 1989, c. 728, s. 1.33.

§ 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. 105-130.5A to file a consolidated or combined return.

(2) Repealed by Session Laws 2012-79, s. 1.14(c), effective June 26, 2012.

(3) Pursuant to a written request from the corporation under G.S. 105-130.5A, the Secretary has provided written advice to the corporation stating that the Secretary will 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. (1967, c. 1110, s. 3; 1973, c. 476, s. 193; 2010-31, s. 31.10(e); 2012-79, s. 1.14(c).)

§ 105-130.15. Basis of return of net income.

(a) The net income of a corporation shall be computed in accordance with the method of accounting it regularly employs in keeping its books. The method must be consistent with respect to both income and deductions and shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this Part.

The Secretary may adopt the rules and regulations and any guidelines administered or established by the Internal Revenue Service unless contrary to any provisions of this Part.

(b) Change of Income Year. –

(1) A corporation may change the income year upon which it reports for income tax purposes without prior approval by the Secretary of Revenue if such change in income year has been approved by or is acceptable to the Federal Commissioner of Internal Revenue and is used for filing income tax returns under the provisions of the Code.

If a corporation desires to make a change in its income year other than as provided above, it may make such change in its income year with the approval of the Secretary of Revenue, provided such approval is requested at least 30 days prior to the end of its new income year.

A corporation which has changed its income year without requesting the approval of the Secretary of Revenue as provided in the first paragraph of this subdivision shall submit to the Secretary of Revenue notification of any change in the income year after the change has been approved by the Federal Commissioner of Internal Revenue or his agent where application for permission to change is required by the Federal Commissioner of Internal Revenue with such notification stating that such approval has been received. Where application for change of the income year is not required by the Federal Commissioner of Internal Revenue, notification of the change of income year shall be submitted to the Secretary of Revenue with the short period return.

(2) A return for a period of less than 12 months (referred to in this subsection as "short period") shall be made when the corporation changes its income year. In

such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year, except that a corporation changing to, or from, a taxable year varying from 52 to 53 weeks shall not be required to file a short period return if such change results in a short period of 359 days or more, or less than seven days. Short period income tax returns shall be filed within the same period following the end of such short period as is required for full year returns under the provisions of G.S. 105-130.17.

(c) Any foreign corporation not domesticated in this State shall not use the installment method of reporting income to this State unless such corporation files a bond with the Secretary of Revenue in such amount and with such sureties as the Secretary shall deem necessary to secure the payment of any taxes which were deferred with respect to any installment transaction.

(d) Notwithstanding any other provision of this Part, any corporation which uses the installment method of reporting income to this State and which is planning to withdraw from this State, merge, or consolidate its business, or terminate its business in this State by any other means whatsoever, shall be required to make a report for income tax purposes, to the Secretary of Revenue, of any unrealized or unreported income from installment sales made while doing business in this State and to pay any tax which may be due on such income. The manner and form for making such report and paying the tax shall be as prescribed by the Secretary. (1939, c. 158, s. 318; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1949, c. 392, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, s. 82; 1998-98, s. 69; 2000-140, s. 64(a); 2011-390, s. 3; 2011-411, s. 8(b).)

§ 105-130.16. Returns.

(a) Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary.

(b), (c) Repealed by Session Laws 2011-390, s. 4, as amended by Session Laws 2011-411, s. 8(b), effective for taxable years beginning on or after January 1, 2012. (1939, c. 158, s. 326; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1951, c. 643, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1998-98, s. 69; 1999-337, s. 22; 2008-134, s. 4(a); 2009-445, s. 6; 2011-390, s. 4; 2011-411, s. 8(b).)

§ 105-130.17. Time and place of filing returns.

(a) Returns must be filed as prescribed by the Secretary at the place prescribed by the Secretary. Returns must be in the form prescribed by the Secretary. The Secretary must furnish forms in accordance with G.S. 105-254.

(b) Except as otherwise provided in this section, the return of a corporation shall be filed on or before the fifteenth day of the fourth month following the close of its income year. An income year ending on any day other than the last day of the month shall be deemed to end on the last day of the calendar month ending nearest to the last day of a taxpayer's actual income year.

(c) In the case of mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158, which are required to file under subsection (a)(9) of G.S. 105-130.11, a return made on the basis of a calendar year shall be filed on or before the fifteenth day of the September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.

(d) A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263.

(d1) Organizations described in G.S. 105-130.11(a)(1), (3), (4), (5), (6), (7) and (8) that are required to file a return under G.S. 105-130.11(b) shall file a return made on the basis of a calendar year on or before the fifteenth day of May following the close of the calendar year and a return made on the basis of a fiscal year on or before the fifteenth day of the fifth month following the close of the fiscal year.

(e) Any corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 105 days after the date it terminates its business in this State.

(f) Repealed by Session Laws 1998-217, s. 42, effective October 31, 1998.

(g) A corporation that files a federal return pursuant to section 6072(c) of the Code shall file its return on or before the fifteenth day of the seventh month following the close of its income year. (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981, c. 56; 1989 (Reg. Sess., 1990), c. 984, s. 8; 1997-300, s. 3; 1998-217, s. 42; 1999-369, s. 5.5; 2000-140, s. 64(b); 2006-18, s. 7; 2007-491, s. 14.)

§ 105-130.18: Repealed by Session Laws 2009-445, s. 7, effective August 7, 2009.

§ 105-130.19. When tax must be paid.

(a) Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return.

(b), (c) Repealed by Session Laws 1989, c. 37, s. 1.

(d) Repealed by Session Laws 1993, c. 450, s. 3.

(1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1977, c. 1114, s. 7; 1989, c. 37, s. 1; 1989 (Reg. Sess., 1990), c. 984, s. 9; 1991 (Reg. Sess., 1992), c. 930, s. 14; 1993, c. 450, s. 3.)

§ 105-130.20. Federal determinations and amended returns.

(a) Federal Determination. – If a taxpayer's federal taxable income or a federal tax credit is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as defined in G.S. 105-228.90.

(b) Amended Return. – The following applies to an amended return filed by a taxpayer with the Commissioner of Internal Revenue:

(1) If the amended return contains an adjustment that would increase the amount of State tax payable under this Part, then notwithstanding the provisions of G.S. 105-241.8(a), the taxpayer must file within six months thereafter an amended return with the Secretary.

(2) If the amended return contains an adjustment that would decrease the amount of State tax payable under this Part, the taxpayer may file an amended return with the Secretary within the provisions of G.S. 105-241.6.

(c) Penalties. – A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. (1939, c. 158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1993 (Reg. Sess., 1994), c. 582, s. 2; 2006-18, s. 4; 2007-491, s. 15; 2017-39, s. 4(a); 2018-5, s. 38.3(a).)

§ 105-130.21. Information at the source.

(a) Every corporation having a place of business or having one or more employees, agents or other representatives in this State, in whatever capacity acting, including lessors or mortgagors of real or personal property, or having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to the bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains or profits paid or payable during any year to any taxpayer, shall make complete return thereof to the Secretary of Revenue under such regulations and in such form and manner and to such extent as may be prescribed by him. The filing of any report in compliance with the provisions of this section by a foreign corporation shall not constitute an act in evidence of and shall not be deemed to be evidence that such corporation is doing business in this State.

(b) Every corporation doing business or having a place of business in this State shall file with the Secretary of Revenue, on such form and in such manner as he may prescribe, the names and addresses of all taxpayers, residents of North Carolina, to whom dividends have been paid and the amount of such dividends during the income year. (1939, c. 158, s. 328; 1945, c. 708, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193.)

§ 105-130.22: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.23. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-130.24. Repealed by Session Laws 1983 (Regular Session, 1984), c. 1004, s. 2.

§ 105-130.25. Credit against corporate income tax for construction of cogenerating power plants.

(a) Credit. – A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), that constructs a cogenerating power plant in North Carolina is allowed as a credit against the tax imposed by this Part an amount equal to ten percent (10%) of the costs paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the costs were paid. To be eligible for the credit allowed by this section, the corporation or partnership must own or control the power plant at the time of construction. The credit allowed by this section may not exceed the amount of tax imposed by this Part for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(b) Cogenerating Power Plant Defined. – For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy using natural gas as its primary energy source.

(c) Alternative Method. – A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Part for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable.

(d) Application. – To be eligible for the credit allowed in this section, a taxpayer must file an application for the credit with the Secretary on or before April 15 following the calendar year in which the costs were paid. The application shall be in the form prescribed by the Secretary and shall include any supporting documentation the Secretary may require. An application with respect to costs paid by a partnership must be made by the partnership on behalf of its partners.

(e) Ceiling. – The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d). If the total amount of tax credits claimed for payments made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. In no case

may the total amount of all tax credits allowed under this section for costs paid in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next 10 taxable years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (d). In such a reapplication, the costs for which a credit is claimed shall be considered as if they had been paid in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (d) are final and shall not be adjusted to account for credits applied for but not claimed. (1979, c. 801, s. 34; 1993 (Reg. Sess., 1994), c. 674, ss. 1, 2, 4; 1995, c. 17, s. 2; 1998-98, s. 69.)

§ 105-130.26. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-130.27 Expired.

§ 105-130.27A. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-130.28: Repealed by Session Laws 2000-128, s. 3, effective for costs incurred during taxable years beginning on or after January 1, 2006.

§§ 105-130.29 through 105-130.33. Repealed by Session Laws 1999-342, s. 1.

§ 105-130.34: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.35: Recodified as § 105-269.5 by Session Laws 1991, c. 45, s. 20.

§§ 105-130.36, 105-130.37: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.38: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 1.

§ 105-130.39: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.40: Recodified as § 105-129.8 by Session Laws 1996, 2nd Extra Session, c. 13, s. 3.2.

§ 105-130.41: Repealed pursuant to the terms of former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-130.42: Recodified as §§ 105-129.35 through 105-129.37 by Session Laws 1999-389, ss. 2-4, effective for taxable years beginning on or after January 1, 1999.

§§ 105-130.43, 105-130.44: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.45. (Repealed effective January 1, 2018) Credit for manufacturing cigarettes for exportation.

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

(1) Base year exportation volume. – The number of cigarettes manufactured and exported by a corporation during the calendar year 2003.

(2) Exportation. – The shipment of cigarettes manufactured in the United States to any of the following sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes:

a. A foreign country.

b. A possession of the United States.

c. A commonwealth of the United States that is not a state.

(3) Successor in business. – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the cigarette exportation business.

(b) Credit. – A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country and that waterborne exports cigarettes and other tobacco products through the North Carolina State Ports during the taxable year is allowed a credit against the taxes levied by this Part. The amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. In the case of a successor in business, the amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with all of the corporation's predecessor corporations' combined base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed may not exceed six million dollars ($6,000,000) and is computed as follows:

Current Year's Exportation Volume Compared to its Base Year's Exportation Volume	Amount of Credit per Thousand Cigarettes Exported
120% or more	40¢
119% – 100%	35¢
99% – 80%	30¢
79% – 60%	25¢
59% – 50%	20¢
Less than 50%	None

(c) Cap. – The credit allowed under this section may not exceed the lesser of six million dollars ($6,000,000) or fifty percent (50%) of the amount of tax imposed by this Part for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section for previous tax years. Any unused portion of a credit allowed in this section may be carried forward for the next succeeding ten years.

(d) Documentation of Credit. – A corporation that claims the credit under this section must include the following with its tax return:

(1) A statement of the base year exportation volume.
(2) A statement of the exportation volume on which the credit is based.
(3) A list of the corporation's export volumes shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the months in the tax year for which the credit is claimed.

(e) No Double Credit. – A taxpayer may not claim this credit and the credit allowed under G.S. 105-130.46 for the same activity.

(f) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.
(2) The total amount of exports with respect to which credits were taken.
(3) The total cost to the General Fund of the credits taken. (1999-333, s. 4; 2003-435, 2nd Ex. Sess., ss. 5.1, 5.2, 5.3; 2005-429, s. 2.10; 2010-166, s. 1.12.)

§ 105-130.46. (See notes for expiration date) Credit for manufacturing cigarettes for exportation while increasing employment and utilizing State Ports.

(a) Purpose. – The credit authorized by this section is intended to enhance the economy of this State by encouraging qualifying cigarette manufacturers to increase employment in this State with the purpose of expanding this State's economy, the use of the North Carolina State Ports, and the use of other State goods and services, including tobacco.

(b) Definitions. – The following definitions apply in this section:

(1) Employment level. – The total number of full-time jobs and part-time jobs converted into full-time equivalences. A job is included in the employment level for a year only if that job is located within the State for more than six months of the year. A job is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State.
(2) Exportation. – The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.
(3) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.
(4) Successor in business. – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the

rights and assumes the burdens of the predecessor corporation and continues the cigarette exportation business.

(c) Employment Level. – In order to be eligible for a full credit allowed under this section, the corporation must maintain an employment level in this State for the taxable year that exceeds the corporation's employment level in this State at the end of the 2004 calendar year by at least 800 full-time jobs. In the case of a successor in business, the corporation must maintain an employment level in this State for the taxable year that exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year by at least 800 full-time jobs.

(d) Credit. – A corporation that satisfies the employment level requirement under subsection (c) of this section, is engaged in the business of manufacturing cigarettes for exportation, and exports cigarettes and other tobacco products through the North Carolina State Ports during the taxable year is allowed a credit as provided in this section. The amount of credit allowed under this section is equal to forty cents (40¢) per one thousand cigarettes exported. The amount of credit earned during the taxable year may not exceed ten million dollars ($10,000,000).

(e) Reduction of Credit. – A corporation that has previously satisfied the qualification requirements of this section but that fails to satisfy the employment level requirement in a succeeding year may still claim a partial credit for the year in which the employment level requirement is not satisfied. The partial credit allowed is equal to the credit that would otherwise be allowed under subsection (d) of this section multiplied by a fraction. The numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State for the taxable year exceeds the corporation's employment level in this State at the end of the 2004 calendar year. The denominator of the fraction is 800. In the case of a successor in business, the numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State for the taxable year exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year.

(f) Allocation. – The credit allowed by this section may be taken against the income taxes levied under this Part or the franchise taxes levied under Article 3 of this Chapter. When the taxpayer claims a credit under this section, the taxpayer must elect the percentage of the credit to be applied against the taxes levied under this Part with any remaining percentage to be applied against the taxes levied under Article 3 of this Chapter. This election is binding for the year in which it is made and for any carryforwards. A taxpayer may elect a different allocation for each year in which the taxpayer qualifies for a credit.

(g) Ceiling. – The total amount of credit that may be taken in a taxable year under this section may not exceed the lesser of the amount of credit which may be earned for that year under subsection (d) of this section or fifty percent (50%) of the amount of tax against which the credit is taken for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section or G.S. 105-130.45 for previous tax years.

(h) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the next succeeding 10 years. All carryforwards of a credit must be taken against the tax against which the credit was originally claimed. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

(i) Documentation of Credit. – A corporation that claims the credit under this section must include the following with its tax return:

(1) A statement of the exportation volume on which the credit is based.

(2) A list of the corporation's export volumes shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the months in the tax year for which the credit is claimed.

(3) Any other information required by the Department of Revenue.

(j) No Double Credit. – A taxpayer may not claim this credit and the credit allowed under G.S. 105-130.45 for the same activity.

(k) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this section.

(2) The amount of cigarettes and other tobacco products exported through the North Carolina State Ports with respect to which credits were taken.

(3) The percentage of domestic leaf content in cigarettes produced during the previous year, as reported by the taxpayer.

(4) The total cost to the General Fund of the credits taken. (2003-435, 2nd Ex. Sess., s. 6.1; 2004-170, s. 16(a); 2010-166, s. 1.13.)

§ 105-130.47. (Repealed for qualifying expenses occurring on or after January 1, 2015) Credit for qualifying expenses of a production company.

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a production, less the amount in excess of one million dollars ($1,000,000) paid to a highly compensated individual:

a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.

d. Employee fringe contributions, including health, pension, and welfare contributions.

e. Per diems, stipends, and living allowances paid for work being performed in this State.

(5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(b1) Repealed by Session Laws 2009-529, s. 1, effective January 1, 2011.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed. The qualifying expenses are subject to audit by the Secretary before the credit is allowed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed twenty million dollars ($20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.
(2) It is a television production of a news program or live sporting event.
(3) It contains material that is obscene, as defined in G.S. 14-190.1.
(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information, itemized by taxpayer:

(1) The location of sites used in a production for which a credit was taken.
(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits taken.
(4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years beginning on or after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Department. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2015. (2005-276, s. 39.1(a); 2005-345, ss. 47(a), 47(b); 2006-162, s. 4(a); 2006-220, s. 2; 2007-527, s. 24; 2008-107, s. 28.24(a); 2009-445, s. 8(a); 2009-529, s. 1; 2010-147, s. 2.1; 2010-166, s. 1.14; 2012-194, s. 79.10(a); 2015-241, s. 15.4(g).)

§ 105-130.48: Repealed pursuant to former subsection (f) of this section, effective for taxable years beginning on or after January 1, 2014.

Part 1A. S Corporation Income Tax.

§ 105-131. Title; definitions; interpretation.

(a) This Part of the income tax Article shall be known and may be cited as the S Corporation Income Tax Act.

(b) For the purpose of this Part, unless otherwise required by the context:

(1) "Code" has the same meaning as in G.S. 105-228.90.

(2) "C Corporation" means a corporation that is not an S Corporation and is subject to the tax levied under Part 1 of this Article.
(3) "Department" means the Department of Revenue.
(4) "Income attributable to the State" means items of income, loss, deduction, or credit of the S Corporation apportioned and allocated to this State pursuant to G.S. 105-130.4.
(5) "Income not attributable to the State" means all items of income, loss, deduction, or credit of the S Corporation other than income attributable to the State.
(6) "Post-termination transition period" means that period defined in section 1377(b)(1) of the Code.
(7) "Pro rata share" means the share determined with respect to an S Corporation shareholder for a taxable period in the manner provided in section 1377(a) of the Code.
(8) "S Corporation" means a corporation for which a valid election under section 1362(a) of the Code is in effect.
(9) "Secretary" means the Secretary of Revenue.
(10) "Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S Corporation.

(c) Except as otherwise expressly provided or clearly appearing from the context, any term used in this Part shall have the same meaning as when used in a comparable context in the Code, or in any statute relating to federal income taxes, in effect during the taxable period. Due consideration shall be given in the interpretation of this Part to applicable sections of the Code in effect and to federal rulings and regulations interpreting those sections, except where the Code, ruling, or regulation conflicts with the provisions of this Part. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1989 (Reg. Sess., 1990), c. 981, s. 4; 1991, c. 689, s. 251; 1991 (Reg. Sess., 1992), c. 922, s. 5; 1993, c. 12, s. 6; 1998-98, ss. 43, 68-70.)

§ 105-131.1. Taxation of an S Corporation and its shareholders.

(a) An S Corporation shall not be subject to the tax levied under G.S. 105-130.3.

(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under Parts 2 and 3 of this Article. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1998-98, ss. 5, 68.)

§ 105-131.2. Adjustment and characterization of income.

(a) Adjustment. – Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6.

(b) Repealed by Session Laws 1989, c. 728, s. 1.35.

(c) Characterization of Income. – S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) are characterized as though received or incurred by the S Corporation and not its shareholder. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1993, c. 485, s. 8; 2006-17, s. 1; 2013-316, s. 1.3(a).)

§ 105-131.3. Basis and adjustments.

(a) The initial basis of a resident shareholder in the stock of an S Corporation and in any indebtedness of the corporation owed to that shareholder shall be determined, as of the later of the date the stock is acquired, the effective date of the S Corporation election, or the date the shareholder became a resident of this State, as provided under the Code.

(b) The basis of a resident shareholder in the stock and indebtedness of an S Corporation shall be adjusted in the manner and to the extent required by section 1011 of the Code except that:

(1) Any adjustments made (other than for income exempt from federal or State income taxes) pursuant to G.S. 105-131.2 shall be taken into account; and

(2) Any adjustments made pursuant to section 1367 of the Code for a taxable period during which this State did not measure S Corporation shareholder income by reference to the corporation's income shall be disregarded.

(c) The initial basis of a nonresident shareholder in the stock of an S Corporation and in any indebtedness of the corporation to that shareholder shall be zero.

(d) The basis of a nonresident shareholder in the stock and indebtedness of an S Corporation shall be adjusted as provided in section 1367 of the Code, except that adjustments to basis shall be limited to the income taken into account by the shareholder pursuant to G.S. 105-131.1(b).

(e) The basis of a shareholder in the stock of an S Corporation shall be reduced by the amount allowed as a loss or deduction pursuant to G.S. 105-131.4(c).

(f) The basis of a resident shareholder in the stock of an S Corporation shall be reduced by the amount of any cash distribution that is not taxable to the shareholder as a result of the application of G.S. 105-131.6(b).

(g) For purposes of this section, a shareholder shall be considered to have acquired stock or indebtedness received by gift at the time the donor acquired the stock or indebtedness, if the donor was a resident of this State at the time of the gift. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35.)

§ 105-131.4. Carryforwards; carrybacks; loss limitation.

(a) Carryforwards and carrybacks to and from an S Corporation shall be restricted in the manner provided in section 1371(b) of the Code.

(b) The aggregate amount of losses or deductions of an S Corporation taken into account by a shareholder pursuant to G.S. 105-131.1(b) may not exceed the combined adjusted bases, determined in accordance with G.S. 105-131.3, of the shareholder in the stock and indebtedness of the S Corporation.

(c) Any loss or deduction that is disallowed for a taxable period pursuant to subsection (b) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(d) (1) Any loss or deduction that is disallowed pursuant to subsection (b) of this section for the corporation's last taxable period as an S Corporation shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to subdivision (1) of this subsection may not exceed the adjusted basis of the shareholder in the stock of the corporation (determined in

accordance with G.S. 105-131.3 at the close of the last day of any post-termination transition period and without regard to this subsection).

(e) Expired. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1989 (Reg. Sess., 1990), c. 984, s. 1; 1991, c. 752.)

§ 105-131.5. Part-year resident shareholder.

If a shareholder of an S Corporation is both a resident and nonresident of this State during any taxable period, the shareholder's pro rata share of the S Corporation's income attributable to the State and income not attributable to the State for the taxable period shall be further prorated between the shareholder's periods of residence and nonresidence, in accordance with the number of days in each period, as provided in G.S. 105-153.4. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 2017-204, s. 1.7(a).)

§ 105-131.6. Distributions.

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder is taxable to the shareholder as provided in Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period is not taxable to the shareholder as provided in Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. 105-131.3.

(2) The accumulated adjustments account maintained for each resident shareholder must be equal to, and adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. 105-131.3(b)(1).

b. The amount of the corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation is ignored and is treated for purposes of this Article as additional accumulated earnings and profits of the corporation. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1998-98, s. 6.)

§ 105-131.7. Returns; shareholder agreements; mandatory withholding.

(a) An S Corporation incorporated or doing business in the State shall file with the Department an annual return, on a form prescribed by the Secretary, on or before the due date prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall

show the name, address, and social security or federal identification number of each shareholder, income attributable to the State and the income not attributable to the State with respect to each shareholder as defined in G.S. 105-131(b)(4) and (5), and such other information as the Secretary may require.

(b) The Department shall permit S Corporations to file composite returns and to make composite payments of tax on behalf of some or all nonresident shareholders. The Department may permit S Corporations to file composite returns and make composite payments of tax on behalf of some or all resident shareholders.

(c) An S Corporation shall file with the Department, on a form prescribed by the Secretary, the agreement of each nonresident shareholder of the corporation (i) to file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the S Corporation, and (ii) to be subject to personal jurisdiction in this State for purposes of the collection of any unpaid income tax, together with related interest and penalties, owed by the nonresident shareholder. If the corporation fails to timely file an agreement required by this subsection on behalf of any of its nonresident shareholders, then the corporation shall at the time specified in subsection (d) of this section pay to the Department on behalf of each nonresident shareholder with respect to whom an agreement has not been timely filed an estimated amount of the tax due the State. The estimated amount of tax due the State shall be computed at the rate levied in G.S. 105-153.7 on the shareholder's pro rata share of the S Corporation's income attributable to the State reflected on the corporation's return for the taxable period. An S Corporation may recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made.

(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this Part.

(2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed.

(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) constitute payments on their behalf of the income tax imposed on them under Parts 2 and 3 of this Article for the taxable period. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1991, c. 689, s. 301; 1998-98, s. 7; 1999-337, s. 24; 2013-316, s. 1.3(b); 2017-204, s. 1.8.)

§ 105-131.8. Tax credits.

(a) For purposes of G.S. 105-151 and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1991, c. 45, s. 7; 1998-98, s. 8.)

§ 105-132: Recodified as § 105-135 by Session Laws 1967, c. 1110, s. 3.

Part 2. Individual Income Tax.

§ 105-133. (Recodified for taxable years beginning on or after January 1, 2014 – see editor's note) Short title.

This Part of the income tax Article shall be known as the Individual Income Tax Act. (1967, c. 1110, s. 3; 1989, c. 728, s. 1.1; 1998-98, ss. 44, 68.)

§ 105-134. (Recodified for taxable years beginning on or after January 1, 2014 – see editor's note) Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State. (1939, c. 158, s. 301; 1967, c. 1110, s. 3; 1989, c. 728, s. 1.2; 1998-98, s. 69; 2005-276, s. 31.1(dd), (jj); 2005-344, s. 10.3; 2006-259, s. 8(j); 2006-264, s. 91(a).)

§ 105-134.1: Recodified as G.S. 105-153.3 by Session Laws 2013-316, s. 1.1(a), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.2: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.2A: Expired pursuant to its own terms, effective for taxable years beginning on or after January 1, 2011.

§ 105-134.3: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.4: Repealed by Session Laws 2011-145, s. 31A.1(d), effective for taxable years beginning on or after January 1, 2012.

§ 105-134.5: Recodified as G.S. 105-153.4 by Session Laws 2013-316, s. 1.1(a), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.6: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.6A: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.7. Transitional adjustments.

(a) Repealed by Session Laws 2013-414, s. 6(f), effective for taxable years beginning on or after January 1, 2012.

(1), (2) Repealed by Session Laws 2013-414, s. 6(f), effective for taxable years beginning on or after January 1, 2012.

(3) Recodified as G.S. 105-134.6(b)(24) and (c)(20) by Session Laws 2013-414, s. 6(a) and (c), effective for taxable years beginning on or after January 1, 2012.

(4), (5) Repealed by Session Laws 2013-414, s. 6(f), effective for taxable years beginning on or after January 1, 2012.

(6) Recodified as G.S. 105-134.6(c)(21) by Session Laws 2013-414, s. 6(b), effective for taxable years beginning on or after January 1, 2012.

(7) Recodified as G.S. 105-134.6(b)(11) by Session Laws 2013-414, s. 6(d), effective for taxable years beginning on or after January 1, 2012.

(b) Recodified as G.S. 105-134.6(d)(12) by Session Laws 2013-414, s. 6(e), effective for taxable years beginning on or after January 1, 2012. (1989, c. 728, s. 1.4; 1993, c. 485, s. 10; 1998-98, s. 91;2013-316, s. 1.1(b); 2013-414, s. 6(a)-(f).)

§ 105-134.8: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§§ 105-135 through 105-149: Repealed by Session Laws 1989, c. 728, s. 1.3.

§ 105-150. Repealed by Session Laws 1973, c. 1287, s. 5.

§ 105-151. (Recodified effective for taxable years beginning on or after January 1, 2014) Tax credits for income taxes paid to other states by individuals.

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary may allow a credit against the taxes imposed by this Part for taxes imposed by and paid to the other state or country on income taxed under this Part.

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.6A, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the taxpayer and is subject to the penalties and interest provided in Subchapter I of this Chapter. (1939, c. 158, s. 325; 1941, c. 50, s. 5; c. 204, s. 1; 1943, c. 400, s. 4; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.5; 1989 (Reg. Sess., 1990), c. 814, s. 17; 1998-98, s. 92; 2013-316, s. 1.1(a); 2013-414, s. 5(b).)

§ 105-151.1: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.2. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-151.3. Repealed by Session Laws 1983 (Regular Session 1984), c. 1004, s. 2.

§ 105-151.4: Repealed by Session Laws 1989, c. 728, s. 1.8.

§ 105-151.5. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-151.6: Expired.

§ 105-151.6A: Repealed by Session Laws 1989, c. 728, s. 1.11.

§§ 105-151.7 through 105-151.10: Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-151.11: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.12: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.13: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.14: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.15: Repealed by Session Laws 1996, 2nd Extra Session, c. 14, s. 1.

§ 105-151.16: Repealed by Session Laws 1989, c. 728, s. 1.21.

§ 105-151.17: Recodified as § 105-129.8 by Session Laws 1996, 2nd Extra Session, c. 13, s. 3.4.

§ 105-151.18: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.19: Repealed by Session Laws 1996, 2nd Extra Session, c. 14, s. 2.

§ 105-151.20: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.21: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.22: Repealed pursuant to former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.23: Recodified as §§ 105-129.35 through 105-129.37 by Session Laws 1999-389, s. 6, effective for taxable years beginning on or after January 1, 1999.

§ 105-151.24: Recodified as G.S. 105-153.10 by Session Laws 2013-316, s. 1.1(a), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.25: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.26: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.27: Repealed by Session Laws 2001-424, s. 34.21(a), effective for taxable years beginning on or after January 1, 2001.

§ 105-151.28: Repealed pursuant to former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.29. (Repealed for qualifying expenses occurring on or after January 1, 2015) Credit for qualifying expenses of a production company.

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars ($1,000,000) to a highly compensated individual:

a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.

d. Employee fringe contributions, including health, pension, and welfare contributions.

e. Per diems, stipends, and living allowances paid for work being performed in this State.

(5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(b1) Repealed by Session Laws 2009-529, s. 2, effective January 1, 2011.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed. The qualifying expenses are subject to audit by the Secretary before the credit is allowed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed twenty million dollars ($20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.
(2) It is a television production of a news program or live sporting event.
(3) It contains material that is obscene, as defined in G.S. 14-190.1.
(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The location of sites used in a production for which a credit was taken.
(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits taken.
(4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on and after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Department. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2015. (2005-276, s. 39.1(b); 2005-345, ss. 47(c), 47(d); 2006-162, s. 4(b); 2006-220, s. 4; 2007-527, s. 24; 2008-107, s. 28.24(b); 2009-445, s. 8(b); 2009-529, s. 2; 2010-147, s. 2.2; 2010-166, s. 1.16; 2012-194, s. 79.10(b); 2015-241, s. 15.4(g).)

§ 105-151.30: Repealed pursuant to former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.31: Repealed pursuant to former subsection (c) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.32: Repealed pursuant to former subsection (c) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.33: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-152: Recodifed as G.S. 105-153.8 by Session Laws 2013-316, s. 1.1.(a) effective for taxable years beginning on or after January 1, 2014.

§ 105-152.1: Repealed by Session Laws 1991 (Regular Session, 1992), c. 930, s. 12.

§ 105-153. Repealed by Session Laws 1967, c. 1110, s. 3.

§ 105-153.1. Short title.

This Part of the income tax Article shall be known as the Individual Income Tax Act. (1967, c. 1110, s. 3; 1989, c. 728, s. 1.1; 1998-98, ss. 44, 68; 2013-316, s. 1.1(a).)

§ 105-153.2. Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property

in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State. (1939, c. 158, s. 301; 1967, c. 1110, s. 3; 1989, c. 728, s. 1.2; 1998-98, s. 69; 2005-276, s. 31.1(dd), (jj); 2005-344, s. 10.3; 2006-259, s. 8(j); 2006-264, s. 91(a); 2013-316, s. 1.1(a).)

§ 105-153.3. Definitions.

The following definitions apply in this Part:

(1) Adjusted gross income. – Defined in section 62 of the Code.
(2) Code. – Defined in G.S. 105-228.90.
(3) Department. – The Department of Revenue.
(4) Educational institution. – An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.
(5) Fiscal year. – Defined in section 441(e) of the Code.
(6) Gross income. – Defined in section 61 of the Code.
(6a) Guaranteed payments. – Defined in section 707(c) of the Code.
(7) Head of household. – Defined in section 2(b) of the Code.
(8) Individual. – A human being.
(9) Limited liability company. – Either a domestic limited liability company organized under Chapter 57D 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 partnership. As applied to a limited liability company that is a partnership under this Part, the term "partner" means a member of the limited liability company.
(10) Married individual. – An individual who is married and is considered married as provided in section 7703 of the Code.
(11) Nonresident individual. – An individual who is not a resident of this State.
(12) North Carolina taxable income. – Defined in G.S. 105-153.4.
(13) Partnership. – A domestic partnership, a foreign partnership, or a limited liability company.
(14) Person. – Defined in G.S. 105-228.90.
(15) Resident. – An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the state for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.
(16) S Corporation. – Defined in G.S. 105-131(b).
(17) Secretary. – The Secretary of Revenue.
(17a) Surviving spouse. – Defined in section 2(a) of the Code.

(18) Taxable year. – Defined in section 441(b) of the Code.

(19) Taxpayer. – An individual subject to the tax imposed by this Part.

(20) This State. – The State of North Carolina. (1989, c. 728, s. 1.4; c. 792, s. 1.2; 1989 (Reg. Sess., 1990), c. 814, s. 15; c. 981, s. 5; 1991, c. 689, s. 252; 1991 (Reg. Sess., 1992), c. 922, s. 6; 1993, c. 12, s. 7; c. 354, s. 13; 1996, 2nd Ex. Sess., c. 13, s. 8.2; 1998-98, ss. 9, 69; 2011-145, s. 31A.1(a); 2011-330, s. 12(a); 2013-157, s. 28; 2013-316, ss. 1.1(a), (c); 2013-414, s. 58(c); 2015-6, s. 2.20(a); 2017-204, ss. 1.9(a), (b).)

§ 105-153.4. (Effective for taxable years beginning before January 1, 2015) North Carolina taxable income defined.

(a) Residents. – For an individual who is a resident of this State, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and G.S. 105-153.6 and G.S. 105-134.6A.

(b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and G.S. 105-153.6 and G.S. 105-134.6A, multiplied by a fraction the denominator of which is the taxpayer's gross income as modified in G.S. 105-153.5 and G.S. 105-153.6 and G.S. 105-134.6A, and the numerator of which is the amount of that 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 gross income, as modified under G.S. 105-153.5 and G.S. 105-153.6 and G.S. 105-134.6A, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. – In order to calculate the numerator of the fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator is the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) of this section for a partner in a partnership or a member of another unincorporated business that has one or more nonresident partners or members and operates in one or more other states, the amount of the partner's or member's distributive share of income of the business plus any guaranteed payments made to a partner from the partnership that is includable in the numerator is determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code that were incurred in the operation of the business.

(e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code. (1989, c. 728, s. 1.4; 1995, c. 17, s. 4; 2005-276, s. 31.1(aa); 2005-344, s. 10.4; 2011-145, s. 31A.1(b); 2012-79, s. 1.2; 2013-414, s. 55; 2013-316, ss. 1.1(a), 1.3(c); 2017-204, ss. 1.9(c), (d).)

§ 105-153.4. (Effective for taxable years beginning on or after January 1, 2015) North Carolina taxable income defined.

(a) Residents. – For an individual who is a resident of this State, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and G.S. 105-153.6.

(b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and G.S. 105-153.6, multiplied by a fraction the denominator of which is the taxpayer's gross income as modified in G.S. 105-153.5 and G.S. 105-153.6, and the numerator of which is the amount of that 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 gross income, as modified under G.S. 105-153.5 and G.S. 105-153.6, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. – In order to calculate the numerator of the fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata share of S Corporation income, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the numerator is the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) of this section for a member of a partnership or other unincorporated business that has one or more nonresident members and operates in one or more other states, the amount of the member's distributive share of the total net income of the business, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the numerator is determined in accordance with the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code that were incurred in the operation of the business.

(e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code. (1989, c. 728, s. 1.4; 1995, c. 17, s. 4; 2005-276, s. 31.1(aa); 2005-344, s. 10.4; 2011-145, s. 31A.1(b); 2012-79, s. 1.2; 2013-414, s. 55; 2013-316, ss. 1.1(a), 1.3(c); 2017-204, ss. 1.9(c), (d).)

§ 105-153.5. Modifications to adjusted gross income.

(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection. The deduction amounts are as follows:

(1) **(Effective for taxable years beginning before January 1, 2016)** Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Standard Deduction**
Married, filing jointly/surviving spouse	$15,000
Head of Household	12,000
Single	7,500
Married, filing separately	7,500.

(1) **(Effective for taxable years beginning on or after January 1, 2016 and before January 1, 2017)** Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

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

(1) **(Effective for taxable years beginning on or after January 1, 2017, and before January 1, 2019)** Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

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

(1) **(Effective for taxable years beginning on or after January 1, 2019)** Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Standard Deduction**
Married, filing jointly/surviving spouse	$20,000
Head of Household	15,000

Single	10,000
Married, filing separately	10,000.

(2) Itemized deduction amount. – An amount equal to the sum of the items listed in this subdivision. The amounts allowed under this subdivision are not subject to the overall limitation on itemized deductions under section 68 of the Code:

a. Charitable Contribution. – The amount allowed as a deduction for charitable contributions under section 170 of the Code for that taxable year. For taxable years beginning on or after 2014, a taxpayer who elected to take the income exclusion under section 408(d)(8) of the Code for a qualified charitable distribution from an individual retirement plan by a person who has attained the age of 70 1/2 may deduct the amount that would have been allowed as a charitable deduction under section 170 of the Code had the taxpayer not elected to take the income exclusion.

b. Mortgage Expense and Property Tax. – The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. For taxable years 2014, 2015, 2016, and 2017, the amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence shall not include the amount for mortgage insurance premiums treated as qualified residence interest. The amount allowed under this sub-subdivision may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds twenty thousand dollars ($20,000), these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year.

c. Medical and Dental Expense. – The amount allowed as a deduction for medical and dental expenses under section 213 of the Code for that taxable year.

d. Repayment in the current taxable year of an amount included in adjusted gross income in an earlier taxable year because it appeared that the taxpayer had an unrestricted right to such item, to the extent the repayment is not deducted in arriving at adjusted gross income in the current taxable year. If the repayment is three thousand dollars ($3,000) or less, the deduction is the amount of repayment less (i) the limitation provided under section 67(a) of the Code minus (ii) all other items

deductible under section 67(b) of the Code, not to exceed the limitation provided under section 67(a) of the Code. If the repayment is more than three thousand dollars ($3,000), the deduction is the amount of repayment. No deduction is allowed if the taxpayer calculates the federal income tax for the year of repayment under section 1341(a)(5) of the Code.

(a1) **(Effective for taxable years beginning on or after January 1, 2018)** Child Deduction Amount. – A taxpayer who is allowed a federal child tax credit under section 24 of the Code for the taxable year is allowed a deduction under this subsection for each dependent child for whom the taxpayer is allowed the federal tax credit. The amount of the deduction is equal to the amount listed in the table below based on the taxpayer's adjusted gross income, as calculated under the Code:

Filing Status	**AGI**	**Deduction Amount**
Married, filing jointly/ surviving spouse	Up to $40,000	$2,500.00
	Over $40,000 Up to $60,000	2,000.00
	Over $60,000 Up to $80,000	1,500.00
	Over $80,000 Up to $100,000	1,000.00
	Over $100,000 Up to $120,000	500.00
	Over $120,000	0
Head of Household	Up to $30,000	$2,500.00
	Over $30,000 Up to $45,000	2,000.00
	Over $45,000 Up to $60,000	1,500.00
	Over $60,000 Up to $75,000	1,000.00
	Over $75,000 Up to $90,000	500.00
	Over $90,000	0
Single	Up to $20,000	$2,500.00
	Over $20,000 Up to $30,000	2,000.00
	Over $30,000 Up to $40,000	1,500.00
	Over $40,000 Up to $50,000	1,000.00
	Over $50,000	

	Up to $60,000	500.00
	Over $60,000	0
Married, filing separately	Up to $20,000	$2,500.00
	Over $20,000	
	Up to $30,000	2,000.00
	Over $30,000	
	Up to $40,000	1,500.00
	Over $40,000	
	Up to $50,000	1,000.00
	Over $50,000	
	Up to $60,000	500.00
	Over $60,000	0.

(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

(1) Interest upon the obligations of any of the following:
  a. The United States or its possessions.
  b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
  c. A nonprofit educational institution organized or chartered under the laws of this State.
  d. A hospital authority created under G.S. 131E-17.

(2) Gain from the disposition of obligations issued before July 1, 1995, to the extent the gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Refunds of State, local, and foreign income taxes included in the taxpayer's gross income.

(5) The amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax under this Part pursuant to a court order in settlement of any of the following cases:
  a. Bailey v. State, 92 CVS 10221, 94 CVS 6904, 95 CVS 6625, 95 CVS 8230.
  b. Emory v. State, 98 CVS 0738.
  c. Patton v. State, 95 CVS 04346.

(6) Income that meets both of the following requirements:
  a. Is earned or received by an enrolled member of a federally recognized Indian tribe.
  b. Is derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with

activities on the reservation are considered income derived from activities on the reservation.

(7) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.

(8) The amount allowed as a deduction under G.S. 105-153.6 as a result of an add-back for federal accelerated depreciation and expensing.

(9) **(Effective for taxable years beginning on or after January 1, 2015 and expiring for taxable years beginning on or after January 1, 2016)** The amount paid to the taxpayer during the taxable year from the Eugenics Sterilization Compensation Fund as compensation to a qualified recipient under the Eugenics Asexualization and Sterilization Compensation Program under Part 30 of Article 9 of Chapter 143B of the General Statutes. This subdivision expires for taxable years beginning on or after January 1, 2016.

(10) The amount added to federal taxable income under section 108(i)(1) of the Code.

(11) **(Effective for taxable years beginning on or after January 1, 2016)** The amount by which the deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the taxpayer claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.

(12) **(Effective for taxable years beginning on or after January 1, 2018)** The amount deposited during the taxable year to a personal education savings account under Article 41 of Chapter 115C of the General Statutes.

(13) **(Effective for taxable years beginning on or after January 1, 2017)** The amount paid to the taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(c) Additions. – In calculating North Carolina taxable income, a taxpayer must add to the taxpayer's adjusted gross income any of the following items that are not included in the taxpayer's adjusted gross income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by the amount of built-in gains tax imposed on the S Corporation under section 1374 of the Code.

(3) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(4) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The amount excluded from gross income under section 199 of the Code.

(5) The amount required to be added under G.S. 105-153.6 when the State decouples from federal accelerated depreciation and expensing.

(6) **(Effective for taxable years beginning on or after January 1, 2016)** The amount of net operating loss carried to and deducted on the federal return but not absorbed in that year and carried forward to a subsequent year.

(7) **(Effective for taxable years beginning on or after January 1, 2016 and before January 1, 2018)** The amount deducted in a prior taxable year to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary.

(7) **(Effective for taxable years beginning on or after January 1, 2018)** The amount deducted in a prior taxable year to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for education expenses of the designated beneficiary as permitted under section 529 of the Code, unless the withdrawal meets at least one of the following conditions:

a. The withdrawal was not subject to the additional tax imposed by section 529(c)(6) of the Code.

b. The withdrawal was rolled over to an ABLE account as defined in G.S. 147-86.70(b).

(c1) Other Additions. – S Corporations subject to the provisions of Part 1A of this Article, partnerships subject to the provisions of this Part, and estates and trusts subject to the provisions of Part 3 of this Article must add any amount deducted under section 164 of the Code as state, local, or foreign income tax.

(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) For taxable years 2014, 2015, 2016, and 2017, the taxpayer must add the amount excluded from the taxpayer's gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of qualified principal residence indebtedness excluded from adjusted gross income under section 108(a)(1)(E) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

(2) For taxable year 2014, 2015, 2016, and 2017, the taxpayer must add the amount of the taxpayer's deduction for qualified tuition and related expenses under section 222 of the Code. The purpose of this subdivision is to decouple from the above-the-line deduction available under federal tax law.

(3) For taxable years beginning on or after 2014, the taxpayer must add the amount excluded from the taxpayer's gross income for a qualified charitable distribution from an individual retirement plan by a person who has attained age 70 1/2 under section 408(d)(8) of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law.

(4) For taxable years prior to 2014, the taxpayer must add the amount excluded from the taxpayer's gross income for amounts received by a wrongfully

incarcerated individual under section 139F of the Code for which the taxpayer took a deduction under former G.S. 105-134.6(b)(14). The purpose of this subdivision is to prevent a double benefit where federal tax law provides an income exclusion for income for which the State previously provided a deduction.

(5) The taxpayer must add the amount of gain that would be included for federal income tax purposes without regard to section 1400Z-2(b) of the Code. The adjustment made in this subsection does not result in a difference in basis of the affected assets for State and federal income tax purposes. The purpose of this subdivision is to decouple from the deferral of gains reinvested into an Opportunity Fund available under federal law.

(6) The taxpayer may deduct the amount of gain included in the taxpayer's adjusted gross income under section 1400Z-2(a) of the Code to the extent the same income was included in the taxpayer's adjusted gross income in a prior taxable year under subdivision (5) of this subsection. The purpose of this subdivision is to prevent double taxation of income the taxpayer was previously required to include in the calculation of North Carolina taxable income.

(7) The taxpayer must add the amount of gain that would be included in the taxpayer's adjusted gross income but for the step-up in basis under section 1400Z-2(c) of the Code. The purpose of this subdivision is to decouple from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law.

(d) S Corporations. – Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in this section and in G.S. 105-153.6. (2013-316, s. 1.1(d); 2013-360, s. 6.18(b); 2014-3, s. 2.2(a); 2015-2, s. 1.3; 2015-6, ss. 2.20(b), 2.22(b); 2015-241, s. 32.16(a), (b); 2016-5, ss. 2.1(a)-(c), 2.2(a), 5.3(c); 2016-6, ss. 3, 4; 2016-92, s. 1.2; 2016-94, s. 38.1(a), (b); 2017-57, ss. 10A.4(b), 38.2(a), 38.4(a); 2018-5, ss. 5.6(j), 38.1(c), (f), (h), 35.25(g); 2018-97, s. 8.1(b).)

§ 105-153.6. Adjustments when State decouples from federal accelerated depreciation and expensing.

(a) Special Accelerated Depreciation. – A taxpayer who takes a special accelerated depreciation deduction for that property under section 168(k) or 168(n) of the Code must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount taken for that year under those Code provisions. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income. A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(b) 2009 Depreciation Exception. – A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction to its federal taxable income for the 2010 taxable year.

A taxpayer is allowed to deduct this add-back under subsection (a) of this section as if it were for property placed in service in 2010.

(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code. A taxpayer who places section 179 property in service during a taxable year must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income. For taxable years 2010, 2011, and 2012, the dollar limitation is two hundred and fifty thousand dollars ($250,000) and the investment limitation is eight hundred thousand dollars ($800,000). For taxable years beginning on or after 2013, the dollar limitation is twenty-five thousand dollars ($25,000) and the investment limitation is two hundred thousand dollars ($200,000).

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(d) Asset Basis. – The adjustments made in this section do not result in a difference in basis of the affected assets for State and federal income tax purposes, except as modified in subsection (e) of this section.

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor or any owner in a transferor has not taken the bonus depreciation deduction on a prior return.

(2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

(g) Tax Basis. – For transactions described in subsection (e) or (f) of this section, adjusted gross income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property that has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes.

(h) Definitions. – The following definitions apply in this section:

(1) Owner in a transferor. – One or more of the following of a transferor:

a. A partner, shareholder, or member.

b. A beneficiary subject to tax under Part 2 or 3 of Article 4 of this Chapter of a transferor.

(2) Transferor. – An individual, partnership, corporation, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its beneficiaries. (2013-316, s. 1.1(d); 2013-414, s. 58(a); 2014-3, s. 2.1(c); 2015-2, s. 1.2(b); 2015-6, s. 2.8(b); 2016-6, s. 2(b).)

§ 105-153.7. Individual income tax imposed.

(a) **(Effective for taxable years beginning before January 1, 2015)** Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. The tax is five and eight-tenths percent (5.8%) of the taxpayer's North Carolina taxable income.

(a) **(Effective for taxable years beginning on or after January 1, 2015 and before January 1, 2017)** Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. The tax is five and seventy-five hundredths percent (5.75%) of the taxpayer's North Carolina taxable income.

(a) **(Effective for taxable years beginning on or after January 1, 2017 and before January 1, 2019)** Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. The tax is five and four hundred ninety-nine thousandths percent (5.499%) of the taxpayer's North Carolina taxable income.

(a) **(Effective for taxable years beginning on or after January 1, 2019)** Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. The tax is five and one-quarter percent (5.25%) of the taxpayer's North Carolina taxable income.

(b) Withholding Tables. – The Secretary may provide tables that compute the amount of tax due for a taxable year under this Part. The tables do not apply to an individual who files a return under section 443(a)(1) of the Code for a period of less than 12 months due to a change in the individual's annual accounting period or to an estate or trust. (2013-316, s. 1.1(d); 2013-316, s. 1.2(a); 2015-241, s. 32.16(c); 2017-57, s. 38.1(a).)

§ 105-153.8. Income tax returns.

(a) Who Must File. – The following individuals must file with the Secretary an income tax return under affirmation:

(1) Every resident who for the taxable year has gross income under the Code that exceeds the standard deduction amount provided in G.S. 105-153.5(a)(1).

(2) Every nonresident individual who meets all of the following requirements:

a. Receives during the taxable year gross income 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.

b. Has gross income under the Code that exceeds the applicable standard deduction amount provided in G.S. 105-153.5(a)(1).

(3) Any individual whom the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return.

(b) Taxpayer Deceased or Unable to Make Return. – If a taxpayer is unable to file an income tax return, a duly authorized agent of the taxpayer or a guardian or other person charged with the care of the person or property of the taxpayer must file the return. If an individual who was required to file an income tax return for the taxable year while living has died before making the return, the administrator or executor of the estate must file the return in the decedent's name and behalf, and the tax is payable by the estate.

(c) Information Required With Return. – The income tax return must show the adjusted gross income and modifications required by this Part, and any other information the Secretary requires. The Secretary may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(d) Secretary May Require Additional Information. – When the Secretary has reason to believe that any taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer's adjusted gross income or North Carolina taxable income, the Secretary may require any additional information for the proper computation of the taxpayer's adjusted gross income and North Carolina taxable income. In computing the taxpayer's adjusted gross income and North Carolina taxable income, the Secretary must consider the fair profit that would normally arise from the conduct of the trade or business.

(e) Joint Returns. – A husband and wife whose adjusted gross income is determined on a joint federal return must 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 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. (1939, c. 158, s. 326; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1951, c. 643, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 1; c. 1287, s. 5; 1977, c. 315; 1989, c. 728, s. 1.23; 1991 (Reg. Sess., 1992), c. 930, s. 1; 1998-98, ss. 69, 104; 1999-337, s. 25; 2006-66, s. 24.11(a); 2012-79, s. 2.5; 2013-316, ss. 1.1(a), 1.3(d); 2018-5, s. 38.1(g).)

§ 105-153.9. Tax credits for income taxes paid to other states by individuals.

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income that is derived from sources within that state or country and is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is considered a resident of this State under this Part is considered a resident of another state or country under the laws of that state or country, the Secretary may allow a credit against the taxes imposed by this Part for taxes imposed by and paid to the other state or country on income taxed under this Part.

(2) The fraction of the gross income, as modified as provided in G.S. 105-134.6A, G.S. 105-153.5, and G.S. 105-153.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a

tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the taxpayer and is subject to the penalties and interest provided in Subchapter I of this Chapter. (1939, c. 158, s. 325; 1941, c. 50, s. 5; c. 204, s. 1; 1943, c. 400, s. 4; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.5; 1989 (Reg. Sess., 1990), c. 814, s. 17; 1998-98, s. 92; 2013-316, ss. 1.1(a), 1.3(d); 2013-414, s. 5(b).)

§ 105-153.10. (Repealed effective for taxable years beginning on or after January 1, 2018) Credit for children.

(a) Credit. – A taxpayer who is allowed a federal child tax credit under section 24 of the Code for the taxable year is allowed a credit against the tax imposed by this Part for each dependent child for whom the taxpayer is allowed the federal credit. The amount of credit allowed under this section for the taxable year is equal to the amount listed in the table below based on the taxpayer's adjusted gross income, as calculated under the Code:

Filing Status	AGI	Credit Amount
Married, filing jointly	Up to $40,000	$125.00
	Over $40,000 Up to $100,000	$100.00
	Over $100,000	0
Head of Household	Up to $32,000	$125.00
	Over $32,000 Up to $80,000	$100.00
	Over $80,000	0
Single	Up to $20,000	$125.00
	Over $20,000 Up to $50,000	$100.00
	Over $50,000	0
Married, filing separately	Up to $20,000	$125.00
	Over $20,000 Up to $50,000	$100.00
	Over $50,000	0.

(b) Limitations. – A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. (1995, c. 42, s. 3; 1998-98, s. 69; 2001-424, s. 34.20(a); 2002-126, s. 30B.2(a), (b); 2003-284, s. 39B.2; 2013-316, s. 1.1(a), (e).)

§ 105-154. Information at the source returns.

(a) Repealed by Session Laws 1993, c. 354, s. 14.

(b) Information Returns of Payers. – A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, each partner's distributive share of the partnership's income, and the adjustments required by this Part. A partner's distributive share of partnership net income includes any guaranteed payments made to the partner. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall be signed by one of the partners under affirmation in the form required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection.

(e) Publicly Traded Partnership. – The information return and payment requirements under this section are modified as follows for a publicly traded partnership that is described in section 7704(c) of the Code:

(1) The information return required under subsection (c) of this section is limited to partners whose distributive share of the partnership's net income during the tax year was more than five hundred dollars ($500.00).

(2) The payment requirements under subsection (d) of this section do not apply. (1939, c. 158, s. 328; 1945, c. 708, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 5; 1989, c. 728, s. 1.25; 1989 (Reg. Sess., 1990), c. 814, s. 19; 1991 (Reg. Sess., 1992), c. 930, s. 2; 1993, c. 314, s. 1; c. 354, s. 14; 1998-98, s. 69; 1999-337, s. 26; 2008-107, s. 28.8(a); 2013-316, s. 1.3(e); 2017-204, s. 1.9(f).)

§ 105-155. Time and place of filing returns; extensions; affirmation.

(a) Return. – An income tax return shall be filed at the place and in the form prescribed by the Secretary. The income tax return of every taxpayer reporting on a calendar year basis is due on or before the fifteenth day of April in each year. The income tax return of every taxpayer reporting on a fiscal year basis is due on or before the fifteenth day of the fourth month following the close of the fiscal year. These dates do not apply to a nonresident alien whose federal income tax return is due at a later date under section 6072(c) of the Code. The return of a nonresident alien affected by that Code section is due on or before the fifteenth day of the sixth month following the close of the taxable year. An information return shall be filed at the times prescribed by the Secretary. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263.

(b) Repealed by 1991 (Regular Session, 1992), c. 930, s. 3.

(c) Repealed by Session Laws 1998-217, s. 44, effective October 31, 1998.

(d) Forms. – Returns and affirmations shall be in the form prescribed by the Secretary. (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.26; 1989 (Reg. Sess., 1990), c. 984, s. 10; 1991, c. 45, s. 12; 1991 (Reg. Sess., 1992), c. 930, s. 3; 1998-217, s. 44; 2006-18, s. 8.)

§ 105-156: Repealed by Session Laws 2009-445, s. 7, effective August 7, 2009.

§ 105-156.1: Repealed by Session Laws 1989, c. 728, s. 1.28.

§ 105-157. When tax must be paid.

(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return. If the amount shown to be due is less than one dollar ($1.00), no payment need be made.

(b) Repealed by Session Laws 1993, c. 450, s. 4. (1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 702, s. 1; c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 2; c. 1287, s. 5; 1989, c. 728, s. 1.29; 1989 (Reg. Sess., 1990), c. 984, s. 11; 1991 (Reg. Sess., 1992), c. 930, s. 4; 1993, c. 450, s. 4.)

§ 105-158. Taxation of certain Armed Forces personnel and other individuals upon death.

An individual is not subject to the tax imposed by this Part for a taxable year if, under section 692 of the Code, the individual is not subject to federal income tax for that same taxable year. (1969, c. 1116; 1979, c. 179, s. 2; 1989, c. 728, s. 1.30; 1991, c. 439, s. 2; 1998-98, s. 69; 2011-183, s. 72.)

§ 105-159. Federal determinations and amended returns.

(a) Federal Determination. – If a taxpayer's adjusted gross income, filing status, personal exemptions, standard deduction, itemized deductions, or federal tax credit are changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as defined in G.S. 105-228.90.

(b) Amended Return. – The following applies to an amended return filed by a taxpayer with the Commissioner of Internal Revenue:

(1) If the amended return contains an adjustment that would increase the amount of State tax payable under this Part, then notwithstanding the provisions of G.S. 105-241.8(a), the taxpayer must file within six months thereafter an amended return with the Secretary.

(2) If the amended return contains an adjustment that would decrease the amount of State tax payable under this Part, the taxpayer may file an amended return with the Secretary within the provisions of G.S. 105-241.6.

(c) Penalties. – A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. (1939, c. 158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.31; 1993 (Reg. Sess., 1994), c. 582, s. 1; 2006-18, s. 5; 2007-491, s. 16; 2013-414, s. 38; 2017-39, s. 4(b); 2018-5, s. 38.3(b).)

§ 105-159.1: Repealed by Session Law 2013-38.1(e), effective July 1, 2013.

§ 105-159.2: Repealed by Session Laws 2013-360, s. 21.1(c), as amended by Session Laws 2014-3, s. 14.15, and Session Laws 2013-381, s. 38.1(f), effective July 1, 2013.

Part 3. Income Tax – Estates, Trusts, and Beneficiaries.

§ 105-160. Short title.

This Part shall be known as the Income Tax Act for Estates, Trusts, and Beneficiaries. (1967, c. 1110, s. 3; 1989, c. 728, s. 1.36; 1998-98, ss. 45, 68.)

§ 105-160.1. Definitions.

The definitions provided in Part 2 of this Article shall apply in this Part except where the context clearly indicates a different meaning. In addition, as used in this Part, "taxable income" is defined in sections 641 through 692 of the Code. (1989, c. 728, s. 1.38; 1998-98, ss. 69, 71; 2013-414, s. 5(f).)

§ 105-160.2. Imposition of tax.

The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6, except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6 are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. The tax on the amount computed above is at the rate levied in G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 814, s. 21; 1991, c. 689, s. 302; 1998-98, s. 69; 2013-414, s. 5(g); 2014-3, s. 2.3(a); 2017-204, s. 1.12.)

§ 105-160.3. Tax credits.

(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this Part. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except for payments of tax made by or on behalf of the estate or trust.

(b) The tax credits allowed under G.S. 105-153.9 may not be claimed by an estate or trust. (1989, c. 728, s. 1.38; 1998-1, s. 5(b); 1998-98, ss. 10, 105; 1998-212, s. 29A.6(b); 2004-170, s. 17; 2006-66, s. 24.18(f); 2007-323, ss. 31.4(b), 31.5(b), 31.6(b); 2011-330, s. 36; 2012-79, s. 2.6; 2013-316, s. 1.3(f); 2013-364, s. 3; 2018-5, s. 38.10(*l*).)

§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.

(a) If a fiduciary is required to pay income tax to this State for an estate or a trust, the fiduciary shall be allowed a credit against the tax imposed by this Part for income taxes imposed

by and paid to another state or country on income derived from sources within that other state or country in accordance with the formula contained in subsection (b) and the requirements of subsection (c).

(b) The fraction of the gross income for North Carolina income tax purposes that is derived from sources within and subject to income tax in another state or country shall be ascertained and the North Carolina income tax before credit under this section shall be multiplied by that fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(c) Receipts showing the payment of income taxes to another state or country and a true copy of the return upon the basis of which the taxes are assessed shall be filed with the Secretary at or before the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed with the Secretary.

(d) If any taxes paid to another state or country for which a fiduciary has been allowed a credit under this section are at any time credited or refunded to the fiduciary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the fiduciary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.21.

(e) A resident beneficiary of an estate or trust who is taxed under the provisions of Part 2 of this Article on income from an estate or trust determined to be includable in the resident's gross income is allowed a credit against the tax imposed for income taxes paid by the fiduciary to another state or country on the income in accordance with the formula contained in subsection (b) of this section and the requirements of subsection (c) of this section; provided, that if any taxes paid to another state or country for which a beneficiary has been allowed credit under this section are at any time credited or refunded to the beneficiary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the beneficiary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.21. (1989, c. 728, s. 1.38; 1998-98, ss. 69, 71; 2007-491, s. 44(1)b.)

§ 105-160.5. Returns.

The fiduciary of an estate or trust described below shall file an income tax return under affirmation, showing specifically the taxable income and the adjustments required by this Part and such other facts as the Secretary may require for the purpose of making any computation required by this Part:

(1) Every estate or trust which has taxable income under this Part during the taxable year and is required to file an income tax return for the taxable year under the Code.

(2) Every estate or trust which the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return. (1989, c. 728, s. 1.38; 1998-98, s. 69.)

§ 105-160.6. Time and place of filing returns.

An income tax return of an estate or a trust shall be filed as prescribed by the Secretary at the place prescribed by the Secretary. The return of every fiduciary reporting on a calendar year basis shall be filed on or before the 15th day of April in each year, and the return of every fiduciary reporting on a fiscal year basis shall be filed on or before the 15th day of the fourth month following

the close of the fiscal year. A fiduciary may ask the Secretary for an extension of time to file a return under G.S. 105-263. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 984, s. 12; 1991 (Reg. Sess., 1992), c. 930, s. 7.)

§ 105-160.7. When tax must be paid.

(a) The full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return. However, if the amount shown to be due after all credits is less than one dollar ($1.00), no payment need be made.

(b) Repealed by Session Laws 1993, c. 450, s. 5. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 984, s. 13; 1991 (Reg. Sess., 1992), c. 930, s. 8; 1993, c. 450, s. 5.)

§ 105-160.8. Federal determinations.

For purposes of this Part, the provisions of G.S. 105-159 apply to fiduciaries required to file returns for estates and trusts. (1989, c. 728, s. 1.38; 1993 (Reg. Sess., 1994), c. 582, s. 3; 1998-98, s. 69; 2018-5, s. 38.3(c).)

§§ 105-161 through 105-163: Repealed by Session Laws 1989, c. 728, s. 1.37.

§§ 105-163.01 through 105-163.06: Repealed by Session Laws 1991, c. 45, s. 14(b).

§ 105-163.07: Recodified as § 105-151.21 by Session Laws 1991, c. 45, s. 14.

§§ 105-163.08 through 105-163.09: Repealed by Session Laws 1991, c. 45, s. 14(b).

Part 5. Tax Credits for Qualified Business Investments.

§ 105-163.010: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.011: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.012: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.013: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.014: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.015: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

Article 4A.

Withholding; Estimated Income Tax for Individuals.

§ 105-163.1. Definitions.

The following definitions apply in this Article:

(1) Compensation. – Consideration a payer pays to any of the following:
  a. A nonresident individual or nonresident entity for personal services performed in this State.
  b. An ITIN holder who is a contractor and not an employee for services performed in this State.

(2) Repealed by Session Laws 2009-476, s. 1, effective for taxable years beginning on or after January 1, 2010.

(3) Repealed by Session Laws 2014-3, s. 14.4(a), effective for taxable years beginning on or after January 1, 2014.

(4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.

(5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
  a. Controls the payment of wages to an individual for services performed for another.
  b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
  c. Pays wages on behalf of a unit of government that is not located in this State.
  d. Pays wages for any other reason.

(6) Individual. – Defined in G.S. 105-153.3.

(6a) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.

(6b) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN).

(7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(7a) Nonresident contractor. – Either of the following:
  a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
  b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a

performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

(8) Nonresident entity. – Any of the following:

a. A foreign limited liability company, defined using the same definition for the term "foreign LLC" in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.

b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.

c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.

(9) Pass-through entity. – Defined in G.S. 105-228.90.

(10) Payer. – A person who, in the course of a trade or business, pays compensation to any of the following:

a. A nonresident individual or a nonresident entity compensation for personal services performed in this State.

b. An ITIN holder who is a contractor and not an employee for services performed in this State.

(11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.

(11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.

(11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.

(12) Taxable year. – Defined in section 441(b) of the Code.

(13) Wages. – The term has the same meaning as in section 3401 of the Code.

(14) Withholding agent. – An employer, a pension payer, or a payer. (1959, c. 1259, s. 1; 1967, c. 716, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 5; 1979, c. 801, s. 70; 1983, c. 713, ss. 79, 82; 1985, c. 394, s. 1; c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 5; 1989, c. 36, s. 5; c. 728, s. 1.40; 1989 (Reg. Sess., 1990), c. 945, s. 5; c. 981, s. 6; 1991, c. 689, s. 255; 1991 (Reg. Sess., 1992), c. 922, s. 7; 1993, c. 12, s. 9; c. 354, s. 15; 1997-6, s. 6; 1997-109, ss. 1, 2, 4; 1998-162, ss. 1, 2; 1999-414, ss. 1, 2; 2000-126, s. 2; 2003-416, s. 4(b); 2009-476, s. 1; 2013-157, s. 29; 2014-3, s. 14.4(a); 2016-5, s. 2.3; 2018-5, s. 38.1(d).)

§ 105-163.1A. Ordained or licensed clergyman may elect to be considered an employee.

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary and the church he serves to be considered an employee of the church instead of self-employed. Until a clergyman files

an election, amounts paid by a church to a clergyman are not subject to withholding. A church shall withhold taxes from a clergyman's wages after the clergyman files an election with it under this section. (1985, c. 394, s. 2; 1985 (Reg. Sess., 1986), c. 826, s. 9; 1989 (Reg. Sess., 1990), c. 945, s. 6.)

§ 105-163.2. Employers must withhold taxes.

(a) Withholding Required. – An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the additions that employee is required to make under Article 4 of this Chapter and the deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(b) **(Effective for taxable years beginning before January 1, 2016)** Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding allowances provided by these tables and rules shall, as nearly as possible, approximate the additions the employee is required to make under Article 4 of this Chapter and the deductions, and credits to which an employee is entitled under Article 4 of this Chapter. The Secretary shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of allowances to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

(b) **(Effective for taxable years beginning on or after January 1, 2016)** Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article. The Secretary shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of allowances to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year.

The withholding allowances provided by these tables and rules shall, as nearly as possible, approximate the amount of the employee's indicated income tax liability for that year based upon all of the following factors:

(1) An income tax rate equal to the rate set in G.S. 105-153.7 plus one-tenth of one percent (0.1%).
(2) The additions the employee is required to make under Article 4 of this Chapter.
(3) The deductions and credits to which an employee is entitled under Article 4 of this Chapter.

(c) Withholding if No Payroll Period. – If wages are paid with respect to a period that is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, excluding Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid. In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, excluding Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(d) Estimated Withholding. – The Secretary may, by rule, authorize employers to estimate the wages to be paid to an employee during a calendar quarter, calculate the amount to be withheld for each period based on the estimated wages, and, upon payment of wages to the employee, adjust the withholding so that the amount actually withheld is the amount that would be required to be withheld if the employee's payroll period were quarterly.

(e) **(Effective for taxable years beginning before January 1, 2016)** Alternatives to Tables. – If the Secretary determines that use of the withholding tables would be impractical, would impose an unreasonable burden on an employer, or would produce substantially incorrect results, the Secretary may authorize or require an employer to use some other method of determining the amounts to be withheld under this Article. The alternative method authorized by the Secretary must reasonably approximate the predicted income tax liability of the affected employees. In addition, with the agreement of the employer and employee, the Secretary may authorize an employer to use an alternative method that results in withholding of a greater amount than otherwise required under this section.

The Secretary's authorization of an alternative method is discretionary and may be cancelled at any time without advance notice if the Secretary finds that the method is being abused or is not resulting in the withholding of an amount reasonably approximating the predicted income tax liability of the affected employees. The Secretary shall give an employer written notice of any cancellation and the findings upon which the cancellation is based. The cancellation becomes effective upon the employer's receipt of this notice or on the third day after the notice was mailed to the employer, whichever occurs first. If the

employer requests a hearing on the cancellation within 30 days after the cancellation, the Secretary shall grant a hearing. After a hearing, the Secretary's findings are conclusive.

(e) **(Effective for taxable years beginning on or after January 1, 2016)** Alternatives to Tables. – If the Secretary determines that use of the withholding tables would be impractical, would impose an unreasonable burden on an employer, or would produce substantially incorrect results, the Secretary may authorize or require an employer to use some other method of determining the amounts to be withheld under this Article. The alternative method authorized by the Secretary must reasonably approximate the predicted income tax liability of the affected employees based upon the factors provided in subsection (b) of this section. In addition, with the agreement of the employer and employee, the Secretary may authorize an employer to use an alternative method that results in withholding of a greater amount than otherwise required under this section.

The Secretary's authorization of an alternative method is discretionary and may be cancelled at any time without advance notice if the Secretary finds that the method is being abused or is not resulting in the withholding of an amount reasonably approximating the predicted income tax liability of the affected employees. The Secretary shall give an employer written notice of any cancellation and the findings upon which the cancellation is based. The cancellation becomes effective upon the employer's receipt of this notice or on the third day after the notice was mailed to the employer, whichever occurs first. If the employer requests a hearing on the cancellation within 30 days after the cancellation, the Secretary shall grant a hearing. After a hearing, the Secretary's findings are conclusive. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1981, c. 13; 1989, c. 728, s. 1.41; 1989 (Reg. Sess., 1990), c. 945, s. 7; 1997-109, s. 2; 2014-3, s. 14.5(a); 2015-241, s. 32.16A(a).)

§ 105-163.2A. Pension payers must withhold taxes.

(a) Definitions. – The definitions provided in section 3405 of the Code apply in this section.

(b) **(Effective for taxable years beginning before January 1, 2015)** Withholding Required. – A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the payment. Liability for withholding and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to an employee. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(b) **(Effective for taxable years beginning on or after January 1, 2015)** Withholding Required. – A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the payment. Liability for withholding

and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to an employee. The pension payer must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the pension payment were wages. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(c) Amount. – In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period.

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution.

(d) Election of No Withholding. – The recipient may elect not to have taxes withheld under this section to the extent permitted by section 3405 of the Code. The election must be in the form required by the Secretary. In the case of periodic payments, the election remains in effect until revoked by the recipient. In the case of a nonperiodic distribution, the election applies on a distribution-by-distribution basis unless it meets conditions prescribed by the Secretary for it to apply to subsequent nonperiodic distributions by the pension payer.

A pension payer must notify each recipient of the right to elect not to have taxes withheld under this section. The notice must comply with the requirements of section 3405 of the Code and any additional requirements prescribed by the Secretary.

A recipient's election not to have taxes withheld under this section is void if the recipient fails to furnish the recipient's tax identification number to the pension payer, or the Secretary has notified the pension payer that the tax identification number furnished by the recipient is incorrect.

(e) Exemptions. – This section does not apply to the following pension payments:

(1) A pension payment that is wages under this Article.

(2) Any portion of a pension payment that meets both of the following conditions:

a. It is not a distribution or payment from an individual retirement plan as defined in section 7701 of the Code.

b. The pension payer reasonably believes it is not taxable to the recipient under Article 4 of this Chapter.

(3) A distribution described in section 404(k)(2) of the Code, relating to dividends on corporate securities.

(4) A pension payment that consists only of securities of the recipient's employer corporation plus cash not in excess of two hundred dollars ($200.00) in lieu of securities of the employer corporation. (1999-414, s. 3; 2000-126, s. 3; 2014-3, s. 14.6(a); 2015-259, s. 7.1(c).)

§ 105-163.2B. (Effective for taxable years before January 1, 2015) North Carolina State Lottery Commission must withhold taxes.

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings in an amount of six hundred dollars ($600.00) or more. The amount of taxes to be withheld is a percentage of the winnings. The percentage is the individual income tax rate in G.S. 105-153.7. The Commission must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary. (2005-276, s. 31.1(bb); 2005-344, s. 10.2(a); 2006-259, s. 8(f); 2006-264, s. 91(b); 2013-316, s. 1.3(g).)

§ 105-163.2B. (Effective for taxable years beginning on or after January 1, 2015) North Carolina State Lottery Commission must withhold taxes.

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings in an amount of six hundred dollars ($600.00) or more. The amount of taxes to be withheld is a percentage of the winnings. The percentage is the individual income tax rate in G.S. 105-153.7. The Commission must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary. (2005-276, s. 31.1(bb); 2005-344, s. 10.2(a); 2006-259, s. 8(f); 2006-264, s. 91(b); 2013-316, s. 1.3(g); 2015-259, s. 7.1(d).)

§ 105-163.3. Certain payers must withhold taxes.

(a) Requirement. – Every payer who pays more than one thousand five hundred dollars ($1,500) during a calendar year to either a nonresident contractor or an ITIN contractor must deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.

(4) **(Effective for taxable years beginning on or after January 1, 2015)** Compensation paid to an alien, as described by 8 U.S.C. § 1101(a)(15)(H)(ii)(a), that is not subject to federal income tax withholding under section 1441 of the Code.

(c) **(Repealed effective for taxable years beginning on or after January 1, 2015)** Returns. – A payer must file a return with the Secretary and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.

(d) **(Effective for taxable years beginning before January 1, 2015)** Annual Statement and Report. – A payer required to deduct and withhold from a contractor's

compensation under this section must give the contractor a written statement that sets out the following information and any other information required by the Secretary:

(1) The payer's name, address, and taxpayer identification number.
(2) The contractor's name, address, and taxpayer identification number.
(3) The total amount of compensation paid during the calendar year.
(4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor.

Each payer shall file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary in the manner required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(d) **(Effective for taxable years beginning on or after January 1, 2015)** Returns, Annual Statement, and Report. – A payer required to deduct and withhold from a contractor's compensation under this section must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the compensation were wages.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer must obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer must obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer must obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer must obtain the partnership's address and taxpayer identification number. The payer must retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is

in excess of the amount required to be withheld under this section. A payer who makes a refund under this section must take the following actions:

(1) Not report the amount refunded on the annual statement required by subsection (d) of this section.

(2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989, c. 728, s. 1.42; 1989 (Reg. Sess., 1990), c. 945, s. 8; 1997-109, s. 2; 1998-98, ss. 11-13; 1998-162, s. 3; 2009-476, s. 2; 2013-414, s. 39(a); 2015-259, s. 7.1(e); 2015-263, s. 2(a).)

§ 105-163.4. Withholding does not create nexus.

A nonresident withholding agent's act in compliance with this Article does not in itself constitute evidence that the nonresident is doing business in this State. (1959, c. 1259, s. 1; 1989 (Reg. Sess., 1990), c. 945, s. 9; 1997-109, s. 2.)

§ 105-163.5. Employee withholding allowances; certificates.

(a) An employee receiving wages is entitled to the withholding allowances that would result in the employer withholding approximately the employee's income tax liability under Article 4 of this Chapter.

(b) Every employee shall, at the time of commencing employment, furnish his or her employer with a signed withholding allowance certificate informing the employer of the allowances the employee claims. If the employee fails to file the allowance certificate, the employer must compute the amount to be withheld from the employee's wages as if the employee were a single individual with no allowances.

(c) Withholding allowance certificates shall take effect as of the beginning of the first payroll period that ends on or after the date on which the certificate is furnished, or if payment of wages is made without regard to a payroll period, then the certificate shall take effect as of the beginning of the miscellaneous payroll period for which the first payment of wages is made on or after the date on which the certificate is furnished.

(d) If, on any day during the calendar year, the amount of withholding allowances to which the employee is entitled is less than the amount of withholding allowances claimed by the employee on the withholding allowance certificate then in effect with respect to the employee, the employee shall, within 10 days thereafter, furnish the employer with a new withholding allowance certificate stating the amount of withholding allowances which the employee then claims, which shall in no event exceed the amount to which the employee is entitled on that day. If, on any day during the calendar year, the amount of withholding allowances to which the employee is entitled is greater than the amount of withholding allowances claimed, the employee may furnish the employer with a new withholding allowance certificate stating the amount of withholding allowances that the employee then claims, which shall not exceed the amount to which the employee is entitled on that day.

(e) Withholding allowance certificates must be in the form and contain the information required by the Secretary.

(f) In addition to any criminal penalty provided by law, if an individual furnishes his or her employer an allowance certificate that contains information that has no reasonable basis and that results in a lesser amount of tax being withheld under this Article than would have been withheld if the individual had furnished reasonable information, the individual is subject to a penalty of fifty percent (50%) of the amount not properly withheld. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1981 (Reg. Sess., 1982), c. 1277; 1989, c. 728, s. 1.43; 1997-109, s. 2; 2014-3, s. 14.5(b).)

§ 105-163.6. When employer must file returns and pay withheld taxes.

(a) General. – A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary in the manner required by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. – An employer who withholds an average of less than two hundred fifty dollars ($250.00) of State income taxes from wages each month must file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. – An employer who withholds an average of at least two hundred fifty dollars ($250.00) but less than two thousand dollars ($2,000) from wages each month must file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) Semiweekly. – An employer who withholds an average of at least two thousand dollars ($2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal employment taxes attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal employment taxes attributable to the same wages. The date set by the Code for depositing or paying federal employment taxes shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal employment taxes attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal employment taxes attributable to wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for a shortfall in the amount due if the employer would not be subject to a failure-to-deposit penalty had the shortfall occurred

in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.

(e) Category. – The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; c. 1287, s. 7; 1975, 2nd Sess., c. 979, s. 1; 1977, c. 488; 1987, c. 622, s. 9; c. 813, s. 24; 1989 (Reg. Sess., 1990), c. 945, s. 10; 1993, c. 450, s. 6; 1993 (Reg. Sess., 1994), c. 661, s. 1; 1997-109, s. 2; 2001-427, s. 5(a), (b); 2013-414, s. 39(b).)

§ 105-163.6A. Federal determinations.

If the amount of taxes an employer is required to withhold and pay under the Code is changed or corrected, the provisions of G.S. 105-159 apply to employers, pension payers, and every other payer required to withhold taxes under this Article. Failure of an employer to comply with this section does not, however, affect an individual's right to a credit under G.S. 105-163.10. (1993 (Reg. Sess., 1994), c. 582, s. 4; 2007-491, s. 17; 2018-5, s. 38.3(d).)

§ 105-163.7. Statement to employees; information to Secretary.

(a) Report to Employee. – Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall furnish to the employee in respect to the remuneration paid by the employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if the employment is terminated before the close of the calendar year, within 30 days after the date on which the last payment of remuneration is made, duplicate copies of a written statement showing the following:

(1) The employer's name, address, and taxpayer identification number.
(2) The employee's name, address, and social security number.
(3) The total amount of wages or remuneration made.
(4) The total amount deducted and withheld under G.S. 105-163.2.

(b) Informational Return to Secretary. – Every employer shall annually file an informational return with the Secretary that contains the information given on each of the employer's written statements to an employee. The Secretary may require additional information to be included on the informational return, provided the Secretary has given a minimum of 90 days' notice of the additional information required. The informational return is due on or before January 31 of the succeeding year and must be filed in an electronic format as prescribed by the Secretary. If the employer terminates its business or permanently ceases paying wages during the calendar year, the informational return must be filed within 30 days of the last payment of remuneration. The informational return required by this subsection is in lieu of the report required by G.S. 105-154.

(c) Repealed by Session Laws 2002-72, s. 16, effective August 12, 2002.

(d) Deduction Disallowance. – The Secretary may request a person who fails to timely file statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements by that date, and, in addition to any applicable penalty under G.S. 105-236, the amounts claimed on the payer's income tax return as deductions for salaries and wages or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989 (Reg. Sess., 1990), c. 945, s. 11; 1993 (Reg. Sess., 1994), c. 679, s. 8.3; 1997-109, s. 2; 2002-72, s. 16; 2015-259, s. 7.1(a); 2018-5, s. 38.10(n).)

§ 105-163.8. Liability of withholding agents.

(a) A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

(b) Repealed by Session Laws 1998-212, s. 29A.14(g). (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989 (Reg. Sess., 1990), c. 945, s. 12; 1997-109, s. 2; 1998-212, s. 29A.14(g).)

§ 105-163.9. Refund of overpayment to withholding agent.

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing a request for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the wages or compensation of the agent's employees or contractors. A withholding agent must file a request for a refund within the time period set in G.S. 105-241.6. Interest accrues on a refund as provided in G.S. 105-241.21. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1975, c. 74, s. 1; 1981 (Reg. Sess., 1982), c. 1223, s. 3; 1989 (Reg. Sess., 1990), c. 945, s. 13; 1997-109, s. 2; 2007-491, s. 18; 2008-187, s. 15.)

§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.

The amount deducted and withheld under this Article during any calendar year from the wages or compensation of an individual shall be allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity shall be allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount shall be allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. 105-163.3 or G.S. 105-163.7 and any other information the Secretary requires. (1959, c. 1259, s. 1; 1967, c. 1110, s. 4; 1973, c. 476, s. 193; 1989, c. 728, s. 1.44; 1991 (Reg. Sess., 1992), c. 930, s. 9; 1997-109, s. 2.)

§§ 105-163.11 through 105-163.14: Repealed by Session Laws 1985, c. 443, s. 1.

§ 105-163.15. Failure by individual to pay estimated income tax; interest.

(a) In the case of any underpayment of the estimated tax by an individual, the Secretary shall assess interest in an amount determined by applying the applicable annual rate established under G.S. 105-241.21 to the amount of the underpayment for the period of the underpayment.

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier: (i) the fifteenth day of the fourth month following the close of the taxable year, or (ii) with respect to any portion of the underpayment, the date on which such portion is paid. A payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) For purposes of this section there shall be four required installments for each taxable year with the time for payment of the installments as follows:

(1) First installment – April 15 of taxable year;
(2) Second installment – June 15 of taxable year;
(3) Third installment – September 15 of taxable year; and
(4) Fourth installment – January 15 of following taxable year.

(d) Except as provided in subsection (e), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment. The term "required annual payment" means the lesser of:

(1) Ninety percent (90%) of the tax shown on the return for the taxable year, or, if no return is filed, ninety percent (90%) of the tax for that year; or
(2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(e) In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under subsection (d), the amount of the required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subsection shall be recaptured by increasing the amount of the next required installment determined under subsection (d) by the amount of the reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured.

In the case of any required installment, the annualized income installment is the excess, if any, of (i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year. The taxable income shall be placed on an annualized basis under rules prescribed by the Secretary. The applicable percentages for the required installments are as follows:

(1) First installment – twenty-two and one-half percent (22.5%);
(2) Second installment – forty-five percent (45%);
(3) Third installment – sixty-seven and one-half percent (67.5%); and
(4) Fourth installment – ninety percent (90%).

(f) No interest shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Part 2 of Article 4 for the preceding taxable year.

(g) For purposes of this section, the term "tax" means the tax imposed by Part 2 of Article 4 minus the credits against the tax allowed by this Chapter other than the credit allowed by this Article. The amount of the credit allowed under this Article for withheld income tax for the taxable year is considered a payment of estimated tax, and an equal part of that amount is considered to have been paid on each due date of the taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld are considered payments of estimated tax on the dates on which the amounts were actually withheld.

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no interest shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

(1) One installment. – The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable year. The amount of the installment payment must be the lesser of:
    a. Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or
    b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.
(2) Exception. – If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no interest is imposed under subsection (a) of this section

with respect to any underpayment of the required installment for the taxable year.

(3) Eligibility. – An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

(j) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto. This section shall be applied to taxable years of less than 12 months in accordance with rules prescribed by the Secretary.

(k) This section shall not apply to any estate or trust. (1959, c. 1259, s. 1; 1963, c. 785, ss. 3, 4; 1973, c. 476, s. 193; c. 1287, s. 7; 1977, c. 657, s. 5; c. 1114, s. 8; 1985, c. 443, s. 2; 1989, c. 692, s. 7.1; 1991 (Reg. Sess., 1992), c. 950, s. 1; 1997-109, s. 2; 1998-98, s. 71; 1998-212, s. 29A.14(h); 2000-126, s. 4; 2005-276, s. 6.37(l); 2007-491, s. 44(1)a.)

§ 105-163.16. Overpayment refunded.

If the amount of wages or compensation withheld at the source under this Article exceeds the tax imposed by Article 4 of this Chapter against which the withheld tax is credited under G.S. 105-163.10, the excess is considered an overpayment by the employee or contractor. If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax is credited under the provisions of this Article, the excess is considered an overpayment by the taxpayer. An overpayment shall be refunded as provided in Article 9 of this Chapter. (1959, c. 1259, s. 1; 1967, c. 702, s. 2; 1973, c. 476, s. 193; c. 903, s. 3; 1975, c. 74, s. 2; 1979, c. 801, s. 71; 1981 (Reg. Sess., 1982), c. 1223, s. 1; 1983, c. 663, s. 2; c. 865, s. 1; 1985, c. 443, s. 3; 1987 (Reg. Sess., 1988), c. 1063, s. 2; 1989, c. 728, s. 1.45; 1989 (Reg. Sess., 1990), c. 814, s. 23; 1991, c. 45, s. 22; 1993, c. 315, s. 2; 1997-109, s. 2.)

§§ 105-163.17 through 105-163.18: Repealed by Session Laws 1997, c. 109, s. 2.

§§ 105-163.19 through 105-163.21. Repealed by Session Laws 1967, c. 1110, s. 4.

§ 105-163.22. Reciprocity.

The Secretary may, with the approval of the Attorney General, enter into agreements with the taxing authorities of states having income tax withholding statutes that govern the amounts to be withheld from the wages and salaries of residents of the other state or states under the provisions of this Article when the other state or states grant similar treatment to the residents of this State. The agreements may provide for recognition of the anticipated tax credits allowed under the provisions of G.S. 105-153.9 in determining the amounts to be withheld. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1997-109, s. 2; 2014-3, s. 14.28.)

§ 105-163.23. Withholding from federal employees.

The Secretary is designated as the proper official to make request for and enter into agreements with the Secretary of the Treasury of the United States to provide for the compliance with this Article by the head of each department or agency of the United States in withholding of State income taxes from wages of federal employees and paying the same to this State. The Secretary is authorized, empowered, and directed to request and enter into these agreements. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1997-109, s. 2.)

§ 105-163.24. Construction of Article.

This Article shall be liberally construed in pari materia with Article 4 of this Chapter to the end that taxes levied by Article 4 shall be collected with respect to wages and compensation by withholding agents' withholding of the appropriate amounts and by individuals' payments in installments of income tax with respect to income not subject to withholding. (1959, c. 1259, s. 1; 1997-109, s. 2.)

Article 4B.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§§ 105-163.25 through 105-163.37: Recodified as §§ 105-163.38 through 105-163.44.

Article 4C.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§ 105-163.38. Definitions.

The following definitions apply in this Article, unless the context requires otherwise:

(1) Code. – Defined in G.S. 105-228.90.

(1a) Corporation. – Defined in section 7701 of the Code.

(2) Estimated tax. – The amount of income tax the corporation estimates as the amount imposed by Article 4 for the taxable year.

(3) Fiscal year. – An accounting period of 12 months ending on the last day of any month other than December.

(4) Secretary. – The Secretary of Revenue.

(5) Taxable year. – The calendar year or fiscal year used as a basis to determine net income under Article 4. If no fiscal year has been established, "fiscal year" means the calendar year. In the case of a return made for a fractional part of the year under Article 4, or under rules prescribed by the Secretary, "taxable year" means the period for which the return is made. (1959, c. 1259, s. 1A; 1973, c. 476, s. 193; 1983, c. 713, s. 86; 1989 (Reg. Sess., 1990), c. 984, s. 15; 1991 (Reg. Sess., 1992), c. 922, s. 8; 1993, c. 12, s. 10.)

§ 105-163.39. Declarations of estimated income tax required.

(a) Declaration Required. – Every corporation subject to taxation under Article 4 shall submit a declaration of estimated tax to the Secretary. This declaration is due at the time established in G.S. 105-163.40, and payment of the estimated tax is due at the time and in the manner prescribed in that section.

(b) Content. – In the declaration of estimated tax, the corporation shall state its estimated total net income from all sources for the taxable year, the proportion of its total net income allocable to this State, its estimated tax, and any other information required by the Secretary.

(c) Amendments to Declaration. – Under rules prescribed by the Secretary, a corporation may amend a declaration of estimated tax. (1959, c. 1259, s. 1A; 1973, c. 476, s. 193; 1983, c. 713, s. 86.)

§ 105-163.40. Time for submitting declaration; time and method for paying estimated tax; form of payment.

(a) Due Dates of Declarations. – Declarations of estimated tax are due at the same time as the corporation's first installment payment. Installment payments are due as follows:

(1) If, before the 1st day of the 4th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in four equal installments on or before the 15th day of the 4th, 6th, 9th and 12th months of the taxable year.

(2) If, after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in three equal installments on or before the 15th day of the 6th, 9th and 12th months of the taxable year.

(3) If, after the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in two equal installments on or before the 15th day of the 9th and 12th months.

(4) If, after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax on or before the 15th day of the 12th month of the taxable year.

(b) Payment of Estimated Tax When Declaration Amended. – When a corporation submits an amended declaration after making one or more installment payments on its estimated tax, the amount of each remaining installment shall be the amount that would have been payable if the estimate in the amended declaration was the original estimate, increased or decreased as appropriate by the amount computed by dividing:

(1) The absolute value of the difference between:

a. The amount paid and

b. The amount that would have been paid if the estimate in the amended declaration was the original estimate by

(2) The number of remaining installments.

(c) Short Taxable Year. – Payment of estimated tax for taxable years of less than 12 months shall be made in accordance with rules promulgated by the Secretary.

(d) Form of Payment. – A corporation that is required under the Code to pay its federal-estimated corporate income tax by electronic funds transfer must pay its State-estimated tax by electronic funds transfer. (1959, c. 1259, s. 1A; 1973, c. 476, s. 193; 1983, c. 713, s. 86; 1989 (Reg. Sess., 1990), c. 984, s. 16; 1999-389, s. 7.)

§ 105-163.41. Underpayment.

(a) Except as provided in subsection (d), if the amount of estimated tax paid by a corporation during the taxable year is less than the amount of tax imposed upon the corporation under Article 4 of this Chapter for the taxable year, the corporation must be assessed interest in an amount determined by multiplying the amount of the underpayment as determined under subsection (b), for the period of the underpayment as determined under subsection (c), by the percentage established as the rate of interest on assessments under G.S. 105-241.21 that is in effect for the period of the underpayment. For the purpose of this section, the amount of tax imposed under Article 4 of this Chapter is the net amount after subtracting the credits against the tax allowed by this Chapter other than the credit allowed by this Article.

(b) The amount of the underpayment shall be the difference between:

(1) The amount of the installment the corporation would have been required to pay if the corporation's estimated tax equalled ninety percent (90%) of the tax imposed under Article 4 for the taxable year, assuming the same schedule of installments, or ninety percent (90%) of the tax imposed for the taxable year if the corporation made no installment payments; and

(2) The amount, if any, of the corresponding installment timely paid by the corporation.

(c) The period of the underpayment runs from the date the installment was required to be paid to the earlier of:

(1) The 15th day of the fourth month following the close of the taxable year, or

(2) With respect to any portion of the underpayment, the date on which the portion is paid. An installment payment of estimated tax is considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision (1) of subsection (b) for that installment date.

(d) Except as provided in subdivision (5) of this subsection, the interest for underpayment imposed by this section shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installments equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax was equal to the least of:

(1) The tax shown on the return of the corporation for the preceding taxable year, if the corporation filed a return for the preceding taxable year and the preceding year was a taxable year of 12 months;

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or

(3) An amount equal to ninety percent (90%) of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the 4th month;
b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the 6th month;
c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the 9th month; and
d. For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(4) For purposes of this subdivision, the taxable income shall be placed on an annualized basis by multiplying by 12 the taxable income referred to in the preceding sentence, and dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11 as the case may be) referred to in that sentence.

(5) In the case of a large corporation, as defined in section 6655 of the Code, subdivisions (1) and (2) of this subsection shall not apply. (1959, c. 1259, s. 1A; 1973, c. 476, s. 193; 1977, c. 1114, s. 9; 1983, c. 713, s. 86; 1987 (Reg. Sess., 1988), c. 994, ss. 2, 3; 2001-414, s. 13; 2005-276, s. 6.37(m); 2007-491, s. 44(1)a; 2013-414, s. 3.)

§ 105-163.42. Repealed by Session Laws 1985 (Regular Session, 1986), c. 820.

§ 105-163.43. Overpayment refunded.

If the amount of estimated tax paid under this Article exceeds the taxes against which the estimated tax is credited pursuant to this Article, the excess is considered an overpayment by the taxpayer and shall be refunded as provided in Article 9 of this Chapter. (1959, c. 1259, s. 1A; 1967, c. 1110, s. 5; 1973, c. 476, s. 193; 1983, c. 713, s. 86; 1993, c. 315, s. 1.)

§ 105-163.44: Repealed by Session Laws 2000-140, s. 66.

Article 5.

Sales and Use Tax.

§ 105-164: Repealed by Session Laws 1957, c. 1340, s. 5.

Part 1. Title, Purpose and Definitions.

§ 105-164.1. Short title.

This Article shall be known as the "North Carolina Sales and Use Tax Act." (1957, c. 1340, s. 5; 1998-98, s. 47.)

§ 105-164.2. Purpose.

The taxes herein imposed shall be in addition to all other license, privilege or excise taxes and the taxes levied by this Article are to provide revenue for the support of the public school system

of this State and for other necessary uses and purposes of the government and State of North Carolina. (1957, c. 1340, s. 5.)

§ 105-164.3. Definitions.

The following definitions apply in this Article:

(1) Advertising and promotional direct mail. – Printed material that meets the definition of "direct mail" and the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subdivision, "product" means tangible personal property, digital property, or a service.

(1a) Analytical services. – Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.

(1b) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

(1c) Reserved for future codification purposes.

(1e) Reserved for future codification purposes.

(1f) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.

(1g) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

(1h) Aviation gasoline. – Defined in G.S. 105-449.60.

(1i) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. The term does not apply to real property and services to real property. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).

b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.

c. A sale of a product accompanied by a transfer of another product with no additional consideration.

d. A product and the delivery or installation of the product.

e. A product and any service necessary to complete the sale.

(1j) Reserved for future codification purposes.

(1k) Business. – An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The

term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.

(1*l*) Reserved for future codification purposes.

(1m) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

(2) Candy. – A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour.

(2c) Capital improvement. – One or more of the following:

a. New construction, reconstruction, or remodeling.

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

c. Installation of utilities on utility-owned land, right-of-way, or easement, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4.

d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:

1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.

2. Is depreciated under the Code.

3. Is expensed under Section 179 of the Code.

e. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation services.

f. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.

g. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.

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

i. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion

of the real property contract or, for new construction, within 12 months of the new structure being occupied for the first time.

j. Landscaping.

k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (33*l*) of this section as repair, maintenance, and installation services.

(3) Clothing. – All human wearing apparel suitable for general use.

(4) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.

(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.

(4b) Computer. – An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(4c) Computer software. – A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(4d) Computer supply. – An item that is considered a "school computer supply" under the Streamlined Agreement.

(5) Consumer. – A person who stores, uses, or otherwise consumes in this State tangible personal property, digital property, or a service purchased or received from a retailer or supplier either within or without this State.

(5a) Reserved for future codification purposes.

(5b) Custom computer software. – Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.

(5c) Datacenter. – A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply in this subdivision:

a. Concurrently maintainable. – Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

b. Multiple distribution paths. – A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

c. Redundant capacity components. – Components beyond those required to support the computer equipment.

(5d) Repealed by Session Laws 2009-451, s. 27A.3(d), effective January 1, 2010, and applicable to sales made on or after that date.

(6) Delivery charges. – Charges imposed by the retailer for preparation and delivery of personal property or services to a location designated by the consumer.

(6a) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(7) Dietary supplement. – A product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law, identifiable by the "Supplement Facts" box found on the label.

(7a) Digital code. – A code that gives a purchaser of the code a right to receive an item by electronic delivery or electronic access. A digital code may be obtained by an electronic means or by a tangible means. A digital code does not include a gift certificate or a gift card.

(7c) Direct mail. – Printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

(8) Direct-to-home satellite service. – Programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground equipment or distribution equipment, except equipment at the subscribers' premises or the uplink process to the satellite.

(8a) Drug. – A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:

a. Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.

b. Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

c. Is intended to affect the structure or function of the body.

(8b) Durable medical equipment. – Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include mobility enhancing equipment.

a. Can withstand repeated use.

b. Primarily and customarily used to serve a medical purpose.

c. Generally not useful to a person in the absence of an illness or injury.

d. Not worn in or on the body.

(8c) Durable medical supplies. – Supplies related to use with durable medical equipment that are eligible to be covered under the Medicare or Medicaid program.

(8d) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8e) Eligible Internet datacenter. – A datacenter that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in software publishing included in industry 511210 of NAICS or an Internet activity included in industry 519130 of NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.

(8f) Eligible railroad intermodal facility. – Defined in G.S. 105-129.95.

(8g) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.

(9) Engaged in business. – Any of the following:

a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business for selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, or solicitor operating in this State in the selling or delivering. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.

b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or digital property for the purpose of lease or rental.

c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

d. Shipping wine directly to a purchaser in this State as authorized by G.S. 18B-1001.1.

(10) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco product, as defined in G.S. 105-113.4.

(11) Food sold through a vending machine. – Food dispensed from a machine or another mechanical device that accepts payment.

(11d) Freestanding appliance. – A machine commonly thought of as an appliance operated by gas or electric current. Examples include a dishwasher, washing

machine, clothes dryer, refrigerator, freezer, microwave, and range, regardless of whether the range is slide-in or drop-in.

(12) Gross sales. – The sum total of the sales price of all retail sales of tangible personal property, digital property, and services.

(13) Hub. – Either of the following:

a. An interstate air courier's hub is the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:

1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.

(14) In this (the) State. – Within the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.

(14a) Information service. – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.

(14c) Interstate air business. – An interstate air courier, an interstate freight air carrier, or an interstate passenger air carrier.

(15) Interstate air courier. – A person whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(15b) Interstate freight air carrier. – A person whose primary business is scheduled freight air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.

(16) Interstate passenger air carrier. – A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.

(16a) Reserved for future codification purposes.

(16b) Jet fuel. – Defined in G.S. 105-449.60.

(16e) Landscaping. A service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, and similar items in pots or in buildings.

(16f) Large fulfillment facility. – A facility that satisfies both of the following conditions:

a. The facility is used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders.

b. The Secretary of Commerce has certified that an investment of private funds of at least one hundred million dollars ($100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 400 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

(17) Lease or rental. – A transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100.00) or one percent (1%) of the total required payments.

c. The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this sub-subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

(17a) Repealed by Session Laws 2009-451, s. 27A.3(d), effective January 1, 2010, and applicable to sales made on or after that date.

(18) Repealed by Session Laws 2009-451, s. 27A.3(g), effective August 7, 2009.

(19) Major recycling facility. – Defined in G.S. 105-129.25.

(20) Manufactured home. – A structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.

a., b. Repealed by Session Laws 2003-400, s. 13, effective January 1, 2004, and applicable to sales of modular homes on and after that date.

(20b) Mixed transaction contract. – A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.

(21) Mobile telecommunications service. – A radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and includes all of the following:

a. Both one-way and two-way radio communication services.

b. A mobile service that provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private

one-way or two-way land mobile radio communications by eligible users over designated areas of operation.

c. Any service for which a federal license is required in a personal communications service.

(21a) Mobility enhancing equipment. – Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include durable medical equipment.

a. Primarily and customarily used to provide or increase the ability of an individual to move from one place to another.

b. Appropriate for use either in a home or motor vehicle.

c. Not generally used by a person with normal mobility.

d. Not normally provided on a motor vehicle by a motor vehicle manufacturer.

(21b) Modular home. – A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.

(21c) Modular homebuilder. – A person who furnishes for consideration a modular home to a purchaser that will occupy the modular home. The purchaser can be a person that will lease or rent the unit as real property.

(22) Moped. – As defined in G.S. 20-4.01(27)j.

(23) Motor vehicle. – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

a. A moped.

b. Special mobile equipment.

c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).

d. A farm tractor or other implement of husbandry.

e. A manufactured home, a mobile office, or a mobile classroom.

f. Road construction or road maintenance machinery or equipment.

(23a) Motor vehicle service contract. – A service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle when sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company. For purposes of this subdivision, the term "motor vehicle dealer" has the same meaning as defined in G.S. 20-286 and the term "motor vehicle service agreement company" is a person other than a motor vehicle dealer that is an obligor of a service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle and who is not an insurer.

(23c) NAICS. – Defined in G.S. 105-228.90.

(24) Net taxable sales. – The gross sales or gross receipts of a retailer or another person taxed under this Article after deducting exempt sales and nontaxable sales.

(24a) New construction. – Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.

(25) Nonresident retail or wholesale merchant. – A person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or digital property and selling the property outside the State or in the business of providing a service.

(25a) Operator. – A person provided with the lease or rental of tangible personal property or a motor vehicle to operate, drive, or maneuver the tangible personal property or motor vehicle and whose presence, skill, knowledge, and expertise are necessary to bring about a desired or appropriate effect. The person must do more than calibrate, test, analyze, research, probe, or monitor the tangible personal property or motor vehicle.

(25b) Other direct mail. – Any direct mail that is not advertising and promotional mail regardless of whether advertising and promotional direct mail is included in the same mailing.

(25c) Over-the-counter drug. – A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following:

a. A "Drug Facts" panel.

b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

(26) Person. – Defined in G.S. 105-228.90.

(26a) Place of primary use. – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use.

(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.

(26c) Prepaid meal plan. – A plan offered by an institution of higher education that meets all of the following requirements:

a. Entitles a person to food or prepared food.

b. Must be billed or paid for in advance.

c. Provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use.

(27) Prepaid telephone calling service. – Prepaid calling service or prepaid wireless calling service.

(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.

(28) Prepared food. – Food that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.

a. It is sold in a heated state or it is heated by the retailer.

b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.

c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.

(29) Prescription. – An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.

(29a) Prewritten computer software. – Computer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.

(30) Production company. – A person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

(30a) Professional motorsports racing team. – A racing team that satisfies all of the following conditions:

a. The team is operated for profit.

b. The team does not claim a deduction under section 183 of the Code.

c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body.

(30b) **(Effective until January 1, 2020)** Prosthetic device. – A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device. [The conditions are as follows:]

a. Artificially replaces a missing portion of the body.

b. Prevents or corrects a physical deformity or malfunction.
c. Supports a weak or deformed portion of the body.

(30b) **(Effective January 1, 2020)** Property management contract. – A written contract to manage one or more of the activities listed in this subdivision that are related to real property used for business, educational, commercial, or income-producing purposes. The activity may include the lease or rental of the property on behalf of the owner, other than the lease or rental of an accommodation taxable under G.S. 105-164.4(a)(3). The term does not include a contract for repair, maintenance, and installation services for real property. The activities that may be performed under a property management contract are as follows:

a. Hiring and supervising employees for the property.
b. Providing a person to manage the property.
c. Receiving and applying revenues received from tenants of the property.
d. Arranging for services from third parties in order to comply with the landlord's obligations under a lease or rental agreement or to comply with facility-related needs of the property's occupants. The activity may include supplemental repair, maintenance, and installation services to complement taxable services provided by third-party vendors if no additional fee is imposed under the contract for that supplemental service.
e. Incurring and paying expenses derived from the operation of the real property.
f. Handling administrative affairs for the real property.

(30d) **(Effective January 1, 2020)** Prosthetic device. – A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device. [The conditions are as follows:]

a. Artificially replaces a missing portion of the body.
b. Prevents or corrects a physical deformity or malfunction.
c. Supports a weak or deformed portion of the body.

(31) Repealed by Session Laws 2017-39, s. 5, effective June 21, 2017.

(32) Purchase. – Acquired for consideration or consideration in exchange for a service, regardless of any of the following:

a. Whether the acquisition was effected by a transfer of title or possession, or both, or a license to use or consume.
b. Whether the transfer was absolute or conditional regardless of the means by which it was effected.
c. Whether the consideration is a price or rental in money or by way of exchange or barter.

(33) Purchase price. – The term has the same meaning as the term "sales price" when applied to an item subject to use tax.

(33a) Qualified aircraft. – An aircraft with a maximum take-off weight of more than 9,000 pounds but not in excess of 15,000 pounds.

(33b) Qualified jet engine. – An engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.

(33c) Qualifying datacenter. – A datacenter that satisfies each of the following conditions:

a. The datacenter certifies that it satisfies or will satisfy the wage standard for the development tier area or zone in which the datacenter is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the datacenter is located. The wage standard for a development tier two area or a development tier three area is an average weekly wage that is at least equal to one hundred ten percent (110%) of the lesser of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the datacenter is located.

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

c. The datacenter certifies that it provides or will provide health insurance for all of its full-time employees as long as the datacenter operates. The datacenter provides health insurance if it pays or will pay at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

(33d) Real property. – Any one or more of the following:

a. Land.

b. Building or structure on land.

c. Permanent fixture on land.

d. A manufactured home or a modular home on land.

(33e) Real property contract. – A contract between a real property contractor and another person to perform a capital improvement to real property.

(33f) Real property contractor. – A person that contracts to perform a real property contract in accordance with G.S. 105-164.4H. The term includes a general contractor, a subcontractor, or a builder for purposes of this Article.

(33g) Reconstruction. – Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.

(33h) Related member. – Defined in G.S. 105-130.7A.

(33i) Remodeling. – A transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.

(33j) Remote sale. – A sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

(33k) Renovation. – Same meaning as the term "remodeling."

(33*l*) Repair, maintenance, and installation services. – The term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicle, digital property, and real property. The term does not include services used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H:

a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.

b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.

c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.

d. To install, apply, connect, adjust, or set into position tangible personal property or digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision

(2c)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).

e. To inspect or monitor property or install, apply, or connect tangible personal property or digital property on a motor vehicle or adjust a motor vehicle.

(34) Retail sale or sale at retail. – The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(34a) Repealed by Session Laws 2016-94, s. 38.5, effective January 1, 2017, and applicable to sales made on or after that date.

(35) Retailer. – Any of the following persons:

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

b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or digital property for use in this State.

c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

d. A person, other than a facilitator, required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.

(35a) Retailer-contractor. – A person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.

(35c) Ringtone. – A digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.

(36) Sale or selling. – The transfer for consideration of 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 applies to 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.
f. An accommodation.
g. A service contract.
h. Any other item subject to tax under this Article.

(37) Sales price. – The total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:
1. The retailer's cost of the property sold.
2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
3. Charges by the retailer for any services necessary to complete the sale.
4. Delivery charges.
5. Installation charges.
6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
7. Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
8. The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
I. Presentation by the consumer of a coupon or other documentation.
II. Identification of the consumer as a member of a group eligible for a discount.
III. The invoice the retailer gives the consumer.

b. The term does not include any of the following:
1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

(37a) Satellite digital audio radio service. – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.

(37b) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.

(37d) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.

(37g) **(Effective July 1, 2018)** Secondary metals recycler. – A person that gathers and obtains ferrous metals, nonferrous metals, and items that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.

(38) Secretary. – The Secretary of the North Carolina Department of Revenue.

(38b) Service contract. – A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.

(39) Repealed by Session Laws 2002-16, s. 3, effective August 1, 2002, and applicable to taxable services reflected on bills dated after August 1, 2002.

(40) Soft drink. – A nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include beverages that contain one or more of the following:

a. Milk or milk products.

b. Soy, rice, or similar milk substitutes.

c. More than fifty percent (50%) vegetable or fruit juice.

(41) Special mobile equipment. – Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(42) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.

(43) State agency. – A unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.

(44) Storage. – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or digital property for any period of time purchased from a person in business.

(45) Repealed by Session Laws 2009-451, s. 27A.3(g), effective August 7, 2009.

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of May 3, 2018.

(46) Tangible personal property. – Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.

(47) Taxpayer. – Any person liable for taxes under this Article.

(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

a. An information service.

b. The sale, installation, maintenance, or repair of tangible personal property.

c. Directory advertising and other advertising.

d. Billing and collection services provided to a third party.

e. Internet access service.

f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.

g. Ancillary service.

h. Digital property that is delivered or accessed electronically, including an audio work, an audiovisual work, or any other item subject to tax under G.S. 105-164.4(a)(6b).

(49) Use. – The exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. The term does not include a sale of tangible personal property, digital property, or a service in the regular course of business.

(50) Use tax. – The tax imposed by Part 2 of this Article.

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery.

(51) Wholesale merchant. – A person engaged in the business of any of the following:

a. Making wholesale sales.

b. Buying or manufacturing tangible personal property, digital property, or a service and selling it to a registered resident or nonresident retail or wholesale merchant for resale.

c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.

(52) Wholesale sale. – A sale of tangible personal property, digital property, or a service for the purpose of resale. The term includes a sale of digital property for reproduction into digital or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of digital property, not for reproduction and sale of the reproduced property. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1; 1995 (Reg. Sess., 1996), c. 649, s. 2; 1996, 2nd Ex. Sess., c. 14, ss. 13, 14; 1997-6, s. 7; 1997-370, s. 1; 1997-426, s. 4; 1998-22, s. 4; 1998-55, ss. 7, 13; 1998-98, ss. 13.1(a), 106; 1999-337, s. 28(a), (b); 1999-360, s. 6(a)-(c); 1999-438, s. 4; 2000-153, s. 4; 2000-173, s. 9; 2001-347, ss. 2.1-2.7; 2001-414, s. 14; 2001-424, s. 34.17(b); 2001-430, ss. 1, 2; 2001-476, s. 18(a); 2001-489, s. 3(a); 2002-16, ss. 1, 2, 3; 2002-170, s. 6; 2003-284, s. 45.2; 2003-400, ss. 13, 14; 2003-402, s. 12; 2004-124, s. 32B.3; 2004-170, ss. 18, 19; 2005-276, ss. 33.2, 33.3; 2006-33, s. 1; 2006-66, ss. 24.10(a), 24.17(a); 2006-151, s. 2; 2006-162, s. 5(a); 2006-168, ss. 4.1, 4.3; 2006-252, ss. 2.25(a), (a1), (c), 2.26; 2007-244, s. 1; 2007-323, ss. 31.14(a), 31.20(a), 31.23(b); 2008-107, s. 28.12(a); 2009-445, s. 11; 2009-451, s. 27A.3(d), (g); 2010-91, ss. 1, 2; 2010-166, s. 3.3; 2011-330, ss. 15(a), (b), 31(c); 2012-79, s. 2.7; 2013-316, s. 6(a); 2013-414, ss. 8, 23(a); 2014-3, ss. 4.1(a), 6.1(a), 7.1(a), 14.7; 2015-6, ss. 2.1(b), 2.10; 2015-241, s. 32.18(a); 2015-259, ss. 3(a), 6(a), 4.1(a), 4.2(a); 2015-268, s. 10.1(g); 2016-5, ss. 3.2(a), 3.2(b), 5.5(a); 2016-90, s. 13(h); 2016-92, s. 2.2; 2016-94, s. 38.5(d); 2017-39, s. 5; 2017-57, ss. 38.8(d), 38.9(a); 2017-102, s. 5.2(b); 2017-204, ss. 2.1, 2.9(i); 2018-5, s. 38.5(a), (b), (x).)

Part 2. Taxes Levied.

§ 105-164.4. Tax imposed on retailers and certain facilitators.

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

(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. A sale of a freestanding appliance is a retail sale of tangible personal property. This subdivision applies to the sales price of or gross receipts derived from repair, maintenance, and installation services to tangible personal property. This subdivision does not apply to repair, maintenance, and installation services for real property; these services are taxable under subdivision (16) of this subsection.

(1a) The general rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser, and to the sales price of or the gross receipts derived from repair, maintenance, and installation services for each of the following items. The items taxable under this subdivision are as follows:

a. A manufactured home.

b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular home may be used to fulfill a real property contract. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.

c. An aircraft. The maximum tax is two thousand five hundred dollars ($2,500) per article. The maximum tax does not apply to the sales price of or gross receipts derived from repair, maintenance, and installation services, but the use tax exemption in G.S. 105-164.27A(a3) may apply to these services.

d. A qualified jet engine.

(1b) The rate of three percent (3%) applies to the sales price of each boat sold at retail, including all accessories attached to the boat when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. The maximum tax does not apply to the sales price of or gross receipts derived from the sales price of or gross receipts derived from repair, maintenance, and installation services, but the use tax exemption in G.S. 105-164.27A(a3) may apply to these services.

(1c), (1d) and (1e) Repealed by Session Laws 2005-276, s. 33.4(b), effective January 1, 2006.

(1f) Repealed by Session Laws 2013-316, s. 4.1(c), effective July 1, 2014, and applicable to gross receipts billed on or after July 1, 2014.

a. Repealed by Session Laws 2007-397, s. 10(b), effective October 1, 2007, and applicable to sales occurring on or after that date.

b. Repealed by Session Laws 2006-66, s. 24.19(a), effective July 1, 2007, and applicable to sales made on or after that date.

c. Repealed by Session Laws 2007-397, s. 10(b), effective October 1, 2007, and applicable to sales occurring on or after that date.

(1g) Repealed by Session Laws 2004-110, s. 6.1, effective October 1, 2004, and applicable to sales of electricity made on or after that date.

(1h) Expired pursuant to Session Laws 2004-110, s. 6.4, effective for sales made on or after October 1, 2007.

(1i) Repealed by Session Laws 2007-397, s. 10(a), effective October 1, 2007, and applicable to sales occurring on or after that date.

(1j) Repealed by Session Laws 2007-397, s. 10(f), effective July 1, 2010, and applicable to sales occurring on or after that date.

(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 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) The general rate applies to the gross receipts derived from the rental of an accommodation. These rentals are taxed in accordance with G.S. 105-164.4F.

(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, token, or card-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) Repealed by Session Laws 2013-316, s. 4.1(c), effective July 1, 2014, and applicable to gross receipts billed on or after July 1, 2014.

(4b) A person who sells tangible personal property at a specialty market or other event, 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 specialty market or other event. The term "specialty market" has the same meaning as defined in G.S. 66-250.

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. These services are taxed in accordance with G.S. 105-164.4C.

(4d) The general rate applies to the gross receipts derived from the sale or recharge of prepaid telephone calling service. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service.

(5) Repealed by Session Laws 1998-212, s. 29A.1(a), effective May 1, 1999.

(6) The combined general rate applies to the gross receipts derived from providing video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing video programming is considered a retailer under this Article.

(6a) The general rate applies to the gross receipts derived from providing satellite digital audio radio service. For services received by a mobile or portable station, the service is sourced to the subscriber's business or home address. A person engaged in the business of providing satellite digital audio radio service is a retailer under this Article.

(6b) The general rate applies to the sales price of digital property that is sold at retail and that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. This subdivision applies to the sales price of or gross receipts derived from repair, maintenance, and installation services to digital property. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:

a. An audio work.

b. An audiovisual work.

c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.

d. A photograph or a greeting card.

(7) The combined general rate applies to the sales price of antique spirituous liquor and spirituous liquor other than mixed beverages. As used in this subdivision, the terms "antique spirituous liquor", "spirituous liquor", and "mixed beverage" have the meanings provided in G.S. 18B-101.

(8) Repealed by Session Laws 2015-259, s. 4.2(b), effective October 1, 2015, and applicable to sales made on or after that date.

(9) The combined general rate applies to the gross receipts derived from sales of electricity and piped natural gas.

(10) The general rate of tax applies to the gross receipts derived from an admission charge to an entertainment activity. Gross receipts derived from an admission charge to an entertainment activity are taxable in accordance with G.S. 105-164.4G.

(11) The general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with G.S. 105-164.4I.

(12) The general rate of tax applies to the sales price of or gross receipts derived from a prepaid meal plan. A bundle that includes a prepaid meal plan is taxable in accordance with G.S. 105-164.4D.

(13) Repealed by Session Laws 2017-204, s. 2.2. For effective date and applicability, see Editor's note.

(14), (14a) Expired pursuant to Session Laws 2014-39, s. 1(e), effective July 1, 2015.

(15) The combined general rate applies to the gross receipts derived from the sale of aviation gasoline and jet fuel.

(16) The general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. A person engaging in business as a retailer shall pay the tax required on the net taxable sales of the business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of items subject to tax under subsection (a) of this section in a form that may be accurately and conveniently checked by the Secretary or the Secretary's duly authorized agent. If the records are not kept separately, the tax shall be paid on the gross sales of the business and the exemptions and exclusions provided by this Article are not allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license, privilege, or other taxes. The requirements of this subsection apply to facilitators liable for tax under this Article.

(c) Certificate of Registration. – Before a person may engage in business as a retailer or a wholesale merchant in this State, the person must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. A facilitator that is liable for tax under this Article must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2, 4; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 1044, s. 4; 1989, c. 692, ss. 3.1, 3.3, 8.4(8); c. 770, s. 74.4; 1989 (Reg. Sess., 1990), c. 813, ss. 14, 15; 1991, c. 598, s. 5; c. 689, s. 311; c. 690, s. 1; 1993, c. 372, s. 1; c.

484, s. 2; 1995, c. 17, s. 6; c. 477, s. 1; 1996, 2nd Ex. Sess., c. 13, ss. 1.1, 9.1, 9.2; 1997-475, s. 1.1; 1998-22, s. 5; 1998-55, ss. 8, 14; 1998-98, ss. 13.2, 48(a), (b); 1998-121, ss. 3, 5; 1998-197, s. 1; 1998-212, s. 29A.1(a); 1999-337, ss. 29, 30; 1999-360, s. 3(a), (b); 1999-438, s. 1; 2000-140, s. 67(a); 2001-424, ss. 34.13(a), 34.17(a), 34.23(b), 34.25(a); 2001-430, ss. 3, 4, 5; 2001-476, ss. 17(b)-(d), (f); 2001-487, ss. 67(b), 122(a)-(c); 2002-16, s. 4; 2003-284, s. 38.1; 2003-400, s. 15; 2004-110, ss. 6.1, 6.2, 6.3; 2005-144, s. 9.1; 2005-276, ss. 33.1, 33.4(a), (b); 2006-33, ss. 2, 11; 2006-66, ss. 24.1(a), (b), (c), 24.19(a), (b); 2006-151, s. 3; 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b), 31.16.3(h), 31.16.4(g); 2007-397, s. 10(a)-(f); 2009-451, s. 27A.2(b), (e); 2010-31, s. 31.6(a); 2010-123, s. 10.2; 2011-330, s. 16; 2013-316, ss. 3.1(a), 4.1(c), (e), 5(b), 6(b); 2013-414, ss. 9, 40; 2014-3, ss. 4.1(b), 5.1(a), (f), 6.1(b), 7.1(b), 8.1(a), 14.8; 2014-39, s. 1(a); 2015-6, s. 2.1(b); 2015-98, s. 1(h); 2015-241, s. 32.18(b); 2015-259, ss. 4.1(b), 4.2(b); 2016-92, s. 2.3; 2016-94, s. 38.5(e); 2017-204, s. 2.2; 2018-5, s. 38.5(c).)

§ 105-164.4A: Repealed by Session Laws 2005-276, s. 33.5, effective January 1, 2006.

§ 105-164.4B. Sourcing principles.

(a) General Principles. – The following principles apply in determining where to source the sale of a product for the seller's purpose and do not alter the application of the tax imposed under G.S. 105-164.6. Except as otherwise provided in this section, a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the product, except as otherwise noted in this section:

(1) When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) 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) 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.

(b) Periodic Rental Payments. – When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

(1) For leased or rented property, the first payment is sourced in accordance with the principles set out in subsection (a) of this section and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subdivision applies to all property except a motor vehicle, an aircraft, transportation equipment, and a utility company railway car.

(2) For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.

(3) For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in subsection (a) of this section.

(4) For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in subsection (a) of this section.

(c) Transportation Equipment Defined. – As used in the section, the term "transportation equipment" means any of the following used to carry persons or property in interstate commerce: a locomotive, a railway car, a commercial motor vehicle as defined in G.S. 20-4.01, or an aircraft. The term includes a container designed for use on the equipment and a component part of the equipment.

(d) Exceptions. – This section does not apply to the following:

(1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.

(2) Direct mail. – Direct mail is sourced in accordance with G.S. 105-164.4E.

(3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A "florist wire sale" is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered.

(e) Accommodations. – The rental of an accommodation, as defined in G.S. 105-164.4F, is sourced to the location of the accommodation.

(f) Digital Property. – A purchaser receives digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first.

(g) Prepaid Meal Plan. – The gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person.

(h) Admissions. – The gross receipts derived from an admission charge, as defined in G.S. 105-164.4G, are sourced in accordance with G.S. 105-164.4G.

(i) Computer Software Renewal. – The gross receipts derived from the renewal of a service contract for prewritten software is generally sourced pursuant to subdivision (a) of this section. However, sourcing the renewal to an address where the purchaser received the underlying prewritten software does not constitute bad faith provided the seller has not received information from the purchaser that indicates a change in the location of the

underlying software. (2001-347, s. 2.9; 2002-16, s. 5; 2003-284, s. 45.3; 2004-170, s. 20; 2006-33, s. 3; 2006-66, s. 24.13(a); 2008-187, s. 42; 2009-445, s. 12; 2010-31, s. 31.6(b); 2010-123, s. 10.2; 2011-330, s. 29; 2012-79, s. 2.8; 2013-414, s. 23(b); 2014-3, ss. 4.1(c), 5.1(b); 2016-5, s. 3.3; 2017-204, s. 2.3; 2018-5, s. 38.5(d).)

§ 105-164.4C. Telecommunications service and ancillary service.

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

(1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.

(2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:

a. The call both originates and terminates in this State.

b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.

(3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service or product provided as an adjunct to mobile telecommunications service if the charge for the service or product is included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.

(2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.

(3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section.

(b) Repealed by Session Laws 2006-33, s. 4, effective January 1, 2007.

(c) (1) through (10) Repealed by Session Laws 2006-33, s. 4, effective January 1, 2007.

(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.

(12) through (16) Repealed by Session Laws 2006-33, s. 4, effective January 1, 2007.

(d) Recodified as G.S. 105-164.4D by Session Laws 2006-151, s. 4, effective January 1, 2007.

(e) Private Line. – The gross receipts derived from private telecommunications service are sourced as follows:

(1) If all the customer's channel termination points are located in this State, the service is sourced to this State.

(2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

(3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.

b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

(f) Call Center Cap. – The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars ($50,000) a calendar year. This cap applies separately to each legal entity.

(g) Credit. – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.

(h) Definitions. – The following definitions apply in this section:

(1) Ancillary service. – Defined in G.S. 105-164.3.

(1a) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

(2) Call center. – Defined in G.S. 105-164.27A.

(3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

(4) Place of primary use. – Defined in G.S. 105-164.3.

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card,

travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid telephone calling service, except the exclusive use requirement.

(6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3. (2001-430, s. 6; 2001-487, ss. 67(a), (c), 69(b); 2002-16, s 10; 2002-16, ss. 6, 7, 8, 9, 11, 14; 2003-416, s. 16(a); 2005-276, ss. 33.6, 33.7; 2006-33, s. 4; 2006-151, s. 4; 2011-330, s. 17; 2013-414, s. 41.)

§ 105-164.4D. Bundled transactions.

(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

(1) Fifty percent (50%) test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:

a. Food exempt under G.S. 105-164.13B.

b. A drug exempt under G.S. 105-164.13(13).

c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).

(2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.

(3) Ten percent (10%) test. – The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in this subsection applies.

(4) Prepaid meal plan. – The bundle includes a prepaid meal plan and a dollar value that declines with use. In this circumstance, tax applies to the allocated price of the prepaid meal plan. The tax applies to items purchased with the dollar value that declines with use as the dollar value is presented for payment.

(5) Tuition, room, and meals. – The bundle includes tuition, room, and meals offered by an institution of higher education. In this circumstance, tax applies to the allocated price of the meals. The institution determines the allocated price for meals based on a reasonable allocation of revenue that is supported by the institution's business records kept in the ordinary course of business.

(6) Repealed by Session Laws 2017-204, s. 2.5(a). For effective date and applicability, see editor's note.

(b) Determining Threshold. – A retailer of a bundled transaction subject to this section may use either the retailer's purchase price or the retailer's sales price to determine

if the transaction meets the fifty percent (50%) test or the ten percent (10%) test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of purchase price and sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold set in the subdivision. (2006-151, ss. 4, 5; 2007-244, s. 2; 2014-3, s. 4.1(d); 2016-5, s. 3.7(a); 2016-94, s. 38.5(f); 2017-204, s. 2.5(a).)

§ 105-164.4E. Direct Mail.

(a) Advertising and Promotional Direct Mail. – The following sourcing principles apply to advertising and promotional direct mail.

(1) To the location where the direct mail is delivered if it is purchased pursuant to a direct pay permit issued under G.S. 105-164.27A(a1), or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number issued under G.S. 105-164.27A(a1).

(2) To the location where the direct mail is delivered if the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.

(3) To the location from which the direct mail was shipped if subdivision (1) or (2) of this subsection does not apply.

(b) Other Direct Mail. – The following sourcing principles apply to other direct mail:

(1) 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.

(2) To the jurisdictions where the direct mail is delivered if it is purchased pursuant to a direct pay permit issued under G.S. 105-164.27A(a1), or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number issued under G.S. 105-164.27A(a1).

(c) Relief From Liability. – In the absence of bad faith, a seller is relieved of:

(1) All obligations to collect, pay, or remit any tax on any direct mail transaction where the purchaser issues a direct pay permit issued under G.S. 105-164.27A(a1), or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number issued under G.S. 105-164.27A(a1).

(2) Further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller sourced the sale according to delivery information provided by the purchaser. (2013-414, s. 23(c).)

§ 105-164.4F. Accommodation rentals.

(a) Definition. – The following definitions apply in this section:

(1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

(2) Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.

(3) Rental agent. – The term includes a real estate broker, as defined in G.S. 93A-2.

(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

(c) Facilitator Transactions. – A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed, and the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this section on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(d) Rental Agent. – A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this section. The liability of a rental agent for the tax imposed by this section relieves the provider of the accommodation from liability.

(e) Exemptions. – The tax imposed by this section does not apply to the following:

(1) A private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year other than a private residence, cottage, or similar accommodation listed with a real estate broker or agent.

(2) An accommodation supplied to the same person for a period of 90 or more continuous days.

(3) An accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity. (2014-3, s. 8.1(b).)

§ 105-164.4G. Entertainment activity.

(a) Definition. – The following definitions apply in this section:

(1) Admission charge. – Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee

that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.

(2) Amenity. – A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.

(3) Entertainment activity. – An activity listed in this subdivision:

a. A live performance or other live event of any kind, the purpose of which is for entertainment.

b. A movie, motion picture, or film.

c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.

d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.

(4) Facilitator. – A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.

(b) Tax. – The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

(1) The operator of the venue where the entertainment activity occurs, unless the retailer and the facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.

(2) The person that provides the entertainment and that receives admission charges directly from a purchaser.

(3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) Facilitator. – A facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the facilitator for an entertainment activity. The facilitator must send the retailer the portion of the gross receipts the facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the facilitator fails to send to the retailer. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The

requirements imposed by this subsection on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(d) Dual Remittance. – The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the facilitator to the Department. A facilitator that elects to remit tax under the dual remittance option is required to obtain a certificate of registration in accordance with G.S. 105-164.29. A facilitator is subject to the provisions of Article 9 of this Chapter.

(e) Exceptions. – The tax imposed by this section does not apply to the following:

(1) An amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.

(2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes.

(3) A political contribution.

(4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.

(5) An amount paid solely for transportation.

(6) An amount paid for the right to participate, other than to be a spectator, in the following activities:

a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.

b. Instruction classes related to the items included in sub-subdivision a. of this subdivision.

c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.

d. Amusement rides, including a waterslide.

(f) Exemptions. – The sale at retail and the use, storage, or consumption in this State of the following gross receipts derived from an admission charge to an entertainment activity are specifically exempt from the tax imposed by this Article:

(1) The portion of a membership charge that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(*l*)(2) of the Code.

(2) A donation that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(*l*)(2) of the Code.

(3) Charges for an amenity. If charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities. If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with G.S. 105-164.4D except that G.S. 105-164.4D(a)(3) does not apply.

(4) An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

(5) An event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of this Chapter if all of the following conditions are met:

a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.

b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.

c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term "compensate" means any remuneration included in a person's gross income as defined in section 61 of the Code.

(6) An event sponsored by a farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or animals. For purposes of this exemption, a farmer is a person who holds a qualifying farmer sales tax exemption certificate and farmland is land that is enrolled in the present-use value program under G.S. 105-277.3.

(g) Sourcing. – An admission charge to an entertainment activity is sourced to the location where admission to the entertainment activity may be gained by a person. When the location where admission may be gained is not known at the time of the receipt of the gross receipts for an admission charge, the sourcing principles in G.S. 105-164.4B(a) apply. (2014-3, s. 5.1(c); 2015-6, s. 2.11; 2016-5, s. 3.4; 2017-204, s. 2.10(a); 2018-5, s. 38.5(e), (u).)

§ 105-164.4H. Real property contract.

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

(a1) Substantiation. – Generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services and subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that a transaction is subject to tax as a real property contract in accordance with subsection (a) of this section, subject to tax as a mixed transaction in accordance with subsection (d) of this section, or the transaction is not subject to tax. A person may substantiate that a transaction is a real property contract or a mixed transaction by records that establish the transaction is a real

property contract or by receipt of an affidavit of capital improvement. The receipt of an affidavit of capital improvement, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a capital improvement, and the transaction is subject to tax in accordance with subsection (a) of this section. A person that issues an affidavit of capital improvement is liable for any additional tax due on the transaction, in excess of tax paid on related purchases under subsection (a) of this section, if it is determined that the transaction is not a capital improvement but rather the transaction is subject to tax as a retail sale. A person who receives an affidavit of capital improvement from another person, absent fraud or other egregious activities, is not liable for any additional tax on the gross receipts from the transaction if it is determined that the transaction is not a capital improvement.

The Secretary may establish guidelines for transactions where an affidavit of capital improvement is not required, but rather a person may establish by records that such transactions are subject to tax in accordance with subsection (a) of this section.

(b) Retailer-Contractor. – This section applies to a retailer-contractor as follows:

(1) Acting as a real property contractor. – A retailer-contractor acts as a real property contractor when it contracts to perform a real property contract. A retailer-contractor that purchases tangible personal property or digital property to be installed or applied to real property to fulfill the contract may purchase those items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory items or services from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the property. Property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the tax imposed by this Article.

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

(b1) Repealed by Session Laws 2017-204, s. 2.4(a). For effective date and applicability, see Editor's note.

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

(d) Mixed Transaction Contract. – A mixed transaction contract is taxable as follows:

(1) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the tangible personal property, digital property, or service used to perform those services, are taxable as a real property contract in accordance with this section.

(2) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty-five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the contract. The person must determine an allocated price for the taxable repair, maintenance, and installation services in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of tangible personal property or digital property to fulfill the real property contract is taxed in accordance with this section.

(e) Repealed by Session Laws 2017-204, s. 2.4(a). For effective date and applicability, see Editor's note. (2014-3, s. 7.1(c); 2015-6, s. 2.1(b); 2016-5, s. 3.5; 2016-94, s. 38.5(c), (g); 2016-123, ss. 11.2, 11.3(b), 11.4(a), 11.5; 2017-204, s. 2.4(a), (b); 2018-5, s. 38.5(s).)

§ 105-164.4I. Service contracts.

(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

The retailer of a service contract is the applicable person listed below:

(1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.

(2) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract, the facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.

(3) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract and there is an agreement between the facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the agreement between the retailer and the facilitator.

(a1) Mixed Service Contract. – A service contract for real property that includes two or more services, one of which is subject to tax under this Article and one of which is not

subject to tax under this Article, is taxable in accordance with this subsection. Tax applies to the sales price of or gross receipts derived from a mixed service contract unless one of the following applies:

(1) Allocation. – The person determines an allocated price for the taxable portion of the service contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of the taxable portion of the service contract.

(2) Ten percent (10%) test. – The allocated price of the taxable portion of the service contract does not exceed ten percent (10%) of the price of the contract.

(b) Repealed by Session Laws 2017-204, s. 2.5(a). For effective date and applicability, see editor's note.

(c) Repealed by Session Laws 2018-5, s. 38.5(f), effective June 12, 2018.

(d) Basis of Reporting. – A retailer who sells or derives gross receipts from a service contract must report those sales on an accrual basis of accounting, notwithstanding that the retailer reports tax on the cash basis for other sales at retail. The tax on the sales price of or the gross receipts derived from a service contract is due at the time of the retail sale, notwithstanding any portion that may be financed. If the sales price of or the gross receipts derived from the service contract is financed in whole or in part, the financed amount of the sales price of or the gross receipts derived from the service contract included in each payment is exempt from sales tax if the amount is separately stated in the contract and on the billing statement or other documentation provided to the purchaser at the time of the sale.

(e) Definition. – For purposes of this section, the term "facilitator" means a person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract. (2014-3, s. 6.1(c); 2015-241, s. 32.18(c); 2015-259, ss. 4.2(c), 5(a), 6(c); 2016-5, s. 3.24(a); 2016-94, s. 38.5(h); 2017-57, s. 38.8(b); 2017-204, s. 2.5(a), (b); 2018-5, s. 38.5(f).)

§ 105-164.5: Repealed by Session Laws 1998-121, s. 2, as amended by Session Laws 1998-217, s. 59.

§ 105-164.5A: Repealed by Session Laws 1961, c. 1213, s. 3.

§ 105-164.6. Complementary use tax.

(a) Tax. – An excise tax at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

(1) Tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.

(2) Tangible personal property or digital property leased or rented inside or outside this State for storage, use, or consumption in this State.

(3) Services sourced to this State.

(b) Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. If the property purchased becomes a part of real property in the State, the real property contractor, the retailer-contractor, the subcontractor, the lessee, and the owner are jointly and severally liable for the tax, except as provided in G.S. 105-164.4H(a1) regarding receipt of an affidavit of capital improvement. The liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State, provided the tax is stated and charged separately on the invoice or other document of the retailer given to the purchaser at the time of the sale, except as otherwise provided in G.S. 105-164.7, or provided the retailer remitted the tax subsequent to the sale and the purchaser obtains such documentation. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

(d), (e) Repealed by Session Laws 2005-276, s. 33.8, effective October 1, 2005.

(f) Registration. – A person must obtain a certificate of registration in accordance with G.S. 105-164.29 under any of the following circumstances:

(1) Before the person engages in business in this State selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State.

(2) If the person is a facilitator that is liable for tax under this Article.

(g) Repealed by Session Laws 1995, c. 7, s. 1. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 17, s. 2; c. 48, ss. 3, 4; c. 179, s. 3; c. 527, s. 2; 1979, 2nd Sess., c. 1100, s. 1; c. 1175; 1981, cc. 18, 65; 1983, c. 713, s. 90; 1983 (Reg. Sess., 1984), c. 1065, s. 3; 1989, c. 692, s. 3.4; 1991, c. 689, s. 312; c. 690, s. 3; 1995, c. 7, s. 1; c. 17, s. 7; 1998-121, s. 4; 1999-438, s. 1.1; 2001-414, s. 15; 2003-416, ss. 17, 24(a); 2005-276, s. 33.8; 2006-162, s. 6; 2009-451, s. 27A.3(h); 2011-330, s. 25(a); 2013-414, s. 10; 2014-3, s. 14.9(a); 2017-39, s. 6; 2017-204, s. 2.4(c); 2018-5, s. 38.5(g).)

§ 105-164.6A. Voluntary collection of use tax by sellers.

(a) Voluntary Collection Agreements. – The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal property, digital property, or services the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling

tangible personal property, digital property, or services for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales.

(b) Mandatory Provisions. – The agreements must contain the following provisions:

(1) The seller is not liable for use tax not paid to it by a customer.

(2) A customer's payment of a use tax to the seller relieves the customer of liability for the use tax.

(3) The seller must remit all use taxes it collects from customers on or before the due date specified in the agreement, which may not be later than 31 days after the end of a quarter or other collection period. The collection period cannot be more often than annually if the seller's State and local tax collections are less than one thousand dollars ($1,000) in a calendar year.

(4) A seller who fails to remit use taxes collected on behalf of its customers by the due date specified in the agreement is subject to the interest and penalties provided in Article 9 of this Chapter with respect to the taxes to the same extent as if the seller were a retailer and were required to collect use taxes under this Article.

(c) Optional Provisions. – The agreements may contain the following provisions:

(1) The seller will collect the use tax only on items that are subject to the general rate of tax.

(2) The seller will collect local use taxes only to the extent they are at the same rate in every unit of local government in the State.

(3) The seller will remit the tax and file reports in the form prescribed by the Secretary.

(4) Other provisions establishing the types of transactions on which the seller will collect tax and prescribing administrative procedures and requirements. (1996, 2nd Ex. Sess., c. 14, s. 11; 2000-120, s. 4; 2003-284, s. 45.4; 2009-451, s. 27A.3(i).)

§ 105-164.7. Retailer or facilitator 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 or service and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item or service when sold at retail. The requirements of this section apply to facilitators liable for tax under this Article. 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 on a taxable sale. 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. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 2000-19, s. 1.3; 2006-162, s. 7; 2009-451, s. 27A.3(j); 2012-79, s. 2.9; 2016-92, s. 2.4; 2018-5, s. 38.5(v).)

§ 105-164.8. Retailer's obligation to collect tax; remote sales subject to tax.

(a) Obligation. – A retailer is required to collect the tax imposed by this Article notwithstanding any of the following:

(1) That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written advertisement.

(2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before any tangible personal property or digital property that is part of the order or contract enters this State.

(3) That the purchaser's order or the contract of sale provides that the property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin.

(4) That the property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser.

(5) That the property is delivered directly to the purchaser at a point outside this State.

(6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the property purchased be brought to this State for storage, use, or consumption in this State.

(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

(1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State.

(2) The retailer maintains retail establishments or offices in this State, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the activities of the establishments or offices.

(3) The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars ($10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.

(4) Repealed by Session Laws 1991, c. 45, s. 16.

(5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State. A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in this State based solely on the purchase of the advertising.

(6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power.

(7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) is prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article.

(8) The retailer is a holder of a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1.

(c) Local Tax. – A retailer who is required to collect the tax imposed by this Article must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local sales tax or a local use tax applies to a transaction. A "local sales tax" is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter, and a local use tax is a use tax imposed under that act or Subchapter. (1957, c. 1340, s. 5; 1987 (Reg. Sess., 1988), c. 1096, s. 4; 1991, c. 45, s. 16; 2001-347, s. 2.10; 2003-402, s. 13; 2003-416, s. 24(b), (c); 2009-451, s. 27A.3(a).)

§ 105-164.9. Advertisement to absorb tax unlawful.

Any retailer who shall by any character or public advertisement offer to absorb the tax levied in this Article or in any manner directly or indirectly advertise that the tax herein imposed is not considered an element in the price to the purchaser shall be guilty of a Class 1 misdemeanor. Any violations of the provisions of this section reported to the Secretary shall be reported by him to the Attorney General of the State to the end that such violations may be brought to the attention of the solicitor of the court of the county or district whose duty it is to prosecute misdemeanors in the jurisdiction. It shall be the duty of such solicitor to investigate such alleged violations and if he finds that this section has been violated prosecute such violators in accordance with the law. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1993, c. 539, s. 704; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-164.10. Retail tax calculation.

For the convenience of the retailer in collecting the tax due under this Article, the Secretary must prescribe tables that compute the tax due on sales. The Secretary must issue a separate table for each rate of tax that may apply to a sale. A retailer is not required to collect tax due under this Article based on a bracket system.

In computing tax due under this Article, the tax computation must be carried to the third decimal place and must round up to the next cent whenever the third decimal place is

greater than four. A person liable for tax under this Article may elect to compute the tax due on a transaction on an item or invoice basis and the rounding rule is applied to the aggregate tax due. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 313; 2013-316, s. 5(e); 2014-3, s. 5.1(f); 2017-204, s. 2.9(h).)

§ 105-164.11. Excessive and erroneous collections.

(a) Remittance of Overcollections to Secretary. – When tax is collected for any period on a taxable sale in excess of the total amount that should have been collected or is collected on an exempt or nontaxable sale, the total amount collected must be remitted to the Secretary. If the Secretary determines that the seller overcollected the sales tax on a transaction, the Secretary shall take only one of the actions listed in this subsection. This subsection shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

(1) If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The Secretary may allow the refund only if the seller gives the purchaser credit for or a refund of the overcollected tax. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under subdivision (2) of this subsection.

(2) If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under subdivision (1) of this subsection. The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax.

(3) If neither subdivision (1) nor (2) of this subsection applies, the Secretary shall retain the total amount collected on the transaction.

(b) Refund Procedures First Remedy. – The first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller are the customer refund procedures provided in this Chapter or otherwise provided by administrative rule, bulletin, or directive on the law issued by the Secretary. Where a person recovers tax under G.S. 105-164.11B, a refund or credit under this section is not allowed by the Secretary.

(c) Cause of Action Against Seller. – A cause of action against the seller for over-collected sales or uses taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(d) Presumption of Reasonable Business Practice. – In connection with a purchaser's request from the seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of sales and use taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the

State and the seller has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

(e) Reliance on Written Advice. – A seller who requests specific written advice from the Secretary and who collects and remits sales or use tax in accordance with the written advice the Secretary gives the seller is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the written advice. Subsection (a) of this section governs when a seller may obtain a refund for overcollected tax. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 1007, s. 4; 2004-22, s. 1; 2009-413, s. 1; 2011-293, s. 1; 2018-5, s. 38.5(i).)

§ 105-164.11A. Refund of tax paid on rescinded sale or cancellation of service.

(a) Refund. – A retailer is allowed a refund of sales tax remitted on a rescinded sale or cancelled service. A sale is rescinded when the purchaser returns an item to the retailer and receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax based on the taxable amount of the sales price refunded. A service is cancelled when the service is terminated and the purchaser receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded. A retailer entitled to a refund under this section may reduce taxable receipts by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment as provided in G.S. 105-241.7, provided the tax has been refunded to the purchaser. The records of the retailer must clearly reflect and support the claim for refund for an overpayment of tax or adjustment to taxable receipts for the period in which the refund occurs.

(b) Service Contract. – When a service contract is cancelled and a purchaser receives a refund, in whole or in part, of the sales price paid for the service contract, the purchaser may receive a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded as provided in this subsection:

(1) Refund from retailer. – If the purchaser receives a refund on any portion of the sales price for a service contract purchased from the retailer required to remit the tax on the retail sale of the service contract, then the provisions of subsection (a) of this section apply.

(2) Refund application. – If the purchaser receives a refund on any portion of the sales price for a service contract from a person other than the retailer required to remit the tax on the retail sale of the service contract, then the amount refunded to the purchaser by the person does not have to include the sales tax on the taxable amount of the refund. If the amount refunded to the purchaser by the person does not include the sales tax paid, then the purchaser may apply to the Department for a refund of the pro rata amount of the tax paid based on the taxable amount of the service contract refunded to the purchaser. The application for a refund by a purchaser must be made on a form prescribed by the Secretary, supported by documentation on the taxable amount of the service contract refunded to the purchaser from the person who refunded that amount, and filed within 30 days after the purchaser receives a refund. An application

for a refund filed by the purchaser after the due date is barred. Taxes for which a refund is allowed directly to the purchaser for sales tax paid on a service contract are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21. (2014-3, s. 6.1(d).)

§ 105-164.11B. Recover sales tax paid.

A retailer who pays sales and use tax on property or services and subsequently resells the property or services at retail, without the property or service being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this section. A retailer entitled to recover tax under this section may reduce taxable receipts by the taxable amount of the purchase price of the property or services resold for the period in which the retail sale occurs. A recovery of tax allowed under this section is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid should not be requested pursuant to the authority under G.S. 105-164.11. Any amount for tax recovered under this section in excess of tax due for a reporting period under this Article is not subject to refund. Any tax recovered under this section may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made. (2018-5, s. 38.5(h).)

§ 105-164.12: Repealed by Session Laws 2001-347, s. 2.11.

§ 105-164.12A. Electric golf cart and battery charger considered a single article.

The sale of an electric golf cart and a battery charger that is not physically attached to the golf cart is considered the sale of a single article of tangible personal property in imposing tax under this Article if the battery charger is designed to recharge the golf cart and is sold to the purchaser of the golf cart when the golf cart is sold. (1985 (Reg. Sess., 1986), c. 901.)

§ 105-164.12B. Tangible personal property sold below cost with conditional contract.

(a) Conditional Contract Defined. – A conditional contract is a contract in which all of the following conditions are met:

(1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.

(2) The agreement requires the consumer to pay a cancellation fee to the seller if the consumer cancels the contract for services within the minimum period.

(3) For the item transferred, the seller charges the consumer a price that, after any price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional contract.

(b) Tax. – If a seller transfers an item of tangible personal property as part of a conditional contract, a sale has occurred. The sales price of the item is presumed to be the

retail price at which the item would sell in the absence of the conditional contract. Sales tax at the general rate under G.S. 105-164.4(a) is due at the time of the transfer on the following:

(1) Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined general rate.

(2) The presumed sales price, if the service in the contract is not taxable at the combined general rate.

(3) The percentage of the presumed sales price that is equal to the percentage of the service in the contract that is not taxable at the combined general rate, if any part of the service in the contract is not taxable at the combined general rate.

(c)-(f). Repealed by Session Laws 2007-244, s. 3, effective October 1, 2007. (1996, 2nd Ex. Sess., c. 13, s. 5.1; 2001-414, ss. 16, 17; 2006-151, s. 6; 2007-244, s. 3; 2016-5, s. 3.8(a).)

§ 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. (2012-79, s. 2.10(a).)

Part 3. Exemptions and Exclusions.

§ 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:

Agricultural Group.

(1) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.

(1a), (1b) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.

(2) Repealed by Session Laws 2001, c. 514, s. 1, effective February 1, 2002.

(2a) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.

(2b) Tangible personal property, digital property, and services for a farmer may be exempt as provided in G.S. 105-164.13E.

(3) Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

(4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.

(4a) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.

(4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.

(4c), (4d) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.

(4e) Repealed by Session Laws 2006-162, s. 8(b), effective July 24, 2006.

(4f) Sales of the following to a person who is engaged in the commercial logging business:

a. Logging machinery. – Logging machinery is machinery used to harvest raw forest products for transport to first market.

b. Attachments and repair parts for logging machinery.

c. Lubricants applied to logging machinery.

d. Fuel used to operate logging machinery.

Industrial Group.

(4g) A wood chipper that meets all of the following requirements:

a. It is designed to be towed by a motor vehicle.

b. It is assigned a 17-digit vehicle identification number by the National Highway Transportation Safety Association.

c. It is sold to a person who purchases a motor vehicle in this State that is to be registered in another state and who uses the purchased motor vehicle to tow the wood chipper to the state in which the purchased motor vehicle is to be registered.

(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(51). This exemption does not extend to or include retail sales to users or consumers not for resale.

(5a) **(Repealed effective July 1, 2018)** Products that are subject to tax under Article 5F of this Chapter.

(5b) Sales to a telephone company regularly engaged in providing telecommunications service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.

(5c) Sales of towers, broadcasting equipment, and parts and accessories attached to the equipment to a radio or television company licensed by the Federal Communications Commission.

(5d) Sales of broadcasting equipment and parts and accessories attached to the equipment to a cable service provider. For the purposes of this subdivision, "broadcasting equipment" does not include cable.

(5e) Sales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term "accessories" does not include electricity. The persons are:

a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises or (ii) a production company.
b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

(5f) **(Effective July 1, 2018)** Sales to a major recycling facility of any of the following tangible personal property for use in connection with the facility:
a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
b. Port and dock facilities.
c. Rail equipment.
d. Material handling equipment.

(5g) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
a. Is sold to a company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry group 54171 of NAICS.
b. Is capitalized by the company for tax purposes under the Code.
c. Is used by the company at the establishment in the research and development of tangible personal property.

(5h) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
a. Is sold to a company primarily engaged at the establishment in software publishing activities included in industry group 5112 of NAICS.
b. Is capitalized by the company for tax purposes under the Code.
c. Is used by the company at the establishment in the research and development of tangible personal property.

(5i) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
a. Is sold to a company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of NAICS.
b. Is capitalized by the company for tax purposes under the Code.
c. Is used by the company at the establishment in repairing or refurbishing tangible personal property.

(5j) **(Effective July 1, 2018)** Sales of the following to a company located at a ports facility for waterborne commerce:
a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.

(5k) **(Effective July 1, 2018)** Sales of the following to a secondary metals recycler:

a. Equipment, or an attachment or repair part for equipment, that (i) is capitalized by the person for tax purposes under the Code, (ii) is used by the person in the secondary metals recycling process, and (iii) is not a motor vehicle or an attachment or repair part for a motor vehicle.

b. Fuel, piped natural gas, or electricity for use at the person's facility at which the primary activity is secondary metals recycling.

(5*l*) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

a. Is sold to a company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase.

b. Is capitalized by the company for tax purposes under the Code.

c. Is used by the company in the process described in this subdivision.

(5m) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

a. Is sold to a company that is engaged in the fabrication of metal work and that has annual gross receipts, including the gross receipts of all related persons, as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars ($8,000,000).

b. Is capitalized by the company for tax purposes under the Code.

c. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.

(5n) **(Effective July 1, 2018)** Sales of repair or replacement parts for a ready-mix concrete mill, regardless of whether the mill is freestanding or affixed to a motor vehicle, to a company that primarily sells ready-mix concrete.

(5o) Sales of equipment, or an accessory, an attachment, or a repair part for equipment, that meets all of the following requirements:

a. Is sold to a large fulfillment facility.

b. Is used at the facility in the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products.

c. Is not electricity.

If the level of investment or employment required by G.S. 105-164.3(16f)b. is not timely made, achieved, or maintained, then the exemption provided under this subdivision is forfeited. If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption provided under this subdivision is forfeited on all purchases. If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption provided under this subdivision is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the

minimum required employment level. A taxpayer that forfeits an exemption under this subdivision is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1068, s. 1.

(7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.

(8) Sales to a manufacturer of tangible personal property that enters into or becomes an ingredient or component part of tangible personal property that is manufactured. This exemption does not apply to sales of electricity.

(8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel and piped natural gas used by the facility to generate electricity.

(9) Boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies sold to any of the following:

a. The holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use in commercial fishing operations.

b. The holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations.

c. The operator of a for-hire vessel, as defined in G.S. 113-174, for principal use in the commercial use of the boat.

(10) Sales of the following to commercial laundries or to pressing and dry cleaning establishments:

a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.

c. Fuel and piped natural gas used in the direct performance of the laundering or the pressing and cleaning service. The exemption does not apply to electricity.

Motor Fuels Group.

(10a) Sales of the following to a major recycling facility:

a. Lubricants and other additives for motor vehicles or machinery and equipment used at the facility.

b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

c. Electricity used at the facility.

(10b) Recodified as G.S. 105-164.13(10a)c. by Session Laws 2005-276, s. 33.9, effective January 1, 2006.

(11) Any of the following fuel:

a. Motor fuel, as 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.

(11a) Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles. The definitions in G.S. 105-333 apply in this subdivision.

(11b) **(Expires January 1, 2020)** Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term "commercial aircraft" has the same meaning as defined in subdivision (45a) of this section. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. This subdivision expires January 1, 2020.

Medical Group.

(12) Sales of any of the following items:

a. Prosthetic devices for human use.

b. Mobility enhancing equipment sold on a prescription.

c. Durable medical equipment sold on prescription.

d. Durable medical supplies sold on prescription.

e. Human blood, including whole, plasma, and derivatives.

f. Human tissue, eyes, DNA, or an organ.

(13) All of the drugs listed in this subdivision, including their packaging materials and any instructions or information about the drugs included in the package with them. This subdivision does not apply to pet food or feed for animals. The drugs exempt under this subdivision are as follows:

a. Drugs required by federal law to be dispensed only on prescription.

b. Over-the-counter drugs sold on prescription. This sub-subdivision does not apply to purchases of over-the-counter drugs by hospitals and other medical facilities for use and treatment of patients.

c. Insulin.

(13a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.

(13b) Repealed by Session Laws 1999, c. 438, s. 7, effective October 1, 1999.

(13c) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.

Printed Materials Group.

(14) Public school books on the adopted list, the selling price of which is fixed by State contract.

(14a) Recodified as subdivision (33a) by Session Laws 2000-120, s. 5, effective July 14, 2000.

Transactions Group.

(15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged

off for income tax purposes may, at corresponding periods, be deducted from gross sales. In the case of a municipality that sells electricity, the account may be deducted if it meets all the conditions for charge-off that would apply if the municipality were subject to income tax. Any accounts deducted pursuant to this subdivision must be added to gross sales if afterwards collected. For purposes of this exemption, a worthless account of a purchaser is a "bad debt" as allowed under section 166 of the Code. The amount calculated pursuant to section 166 of the Code must be adjusted to exclude financing charges or interest, sales or use taxes charged on the sales price, uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.

(16) Sales of an article repossessed by the vendor if tax was paid on the sales price of the article.

Exempt Status Group.

(17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Unclassified Group.

(18) Repealed by Session Laws 2005-276, s. 33.9, effective January 1, 2006.

(19) Repealed by Session Laws 1991, c. 618, s. 1.

(20) Sales by blind merchants operating under supervision of the Department of Health and Human Services.

(21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.

(22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.

(22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an "audiovisual master" is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made.

(23) Sales of the following packaging items:

a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse.

(24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.

(25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

(26) Food and prepared food sold within the school building during the regular school day. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

(26a) Food and prepared food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of Health and Human Services.

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

(27) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.

(27a) Repealed by Session Laws 2013-316, s. 3.4(a), effective July 1, 2014, and applicable to purchases made on or after that date.

(28) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.

(29) Repealed by Session Laws 2005-435, s. 30, effective September 27, 2005.

(29a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 5.

(30) Repealed by Session Laws 2014-3, s. 8.3(a), effective October 1, 2014, and applicable to sales made on or after that date.

(31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.

(31a) Food and prepared food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.

(31b) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.

(32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can

mount the body on the chassis. For purposes of this subdivision, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle.

(33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated. "Export" shall include the acts of possessing and marshalling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use in North Carolina or the United States. "Foreign country" shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

(33a) Tangible personal property sold by a retailer to a purchaser inside or outside this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State. This exemption includes printed material sold by a retailer to a purchaser inside or outside this State when the printed material is delivered directly to a mailing house, to a common carrier, or to the United States Postal Service for delivery to a mailing house in this State that will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this State designated by the purchaser.

(34) Repealed by Session Laws 2016-5, s. 3.9(a), effective January 1, 2017, and applicable to sales made on or after that date.

(35) Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the conditions listed in this subdivision are met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity.

a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.

b. The proceeds of the sale are actually used for the organization's activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.

(36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.

(37) Repealed by Session Laws 2001-424, s. 34.23(a), effective December 1, 2001, and applicable to sales made on or after that date.

(38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Nutrition Program.

(39) Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals. As used in this subdivision, the term "free distribution periodical" means a publication that is continuously published on a periodic basis monthly or more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail.

(40) Sales to the Department of Transportation.

(41) Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges.

(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes.

(43) Custom computer software. Custom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on the invoice or similar billing document given to the purchaser at the time of the sale.

(43a) Computer software that meets any of the following descriptions:

a. It is purchased to run on an enterprise server operating system. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software.

b. It is sold to a person who operates a datacenter and is used within the datacenter.

c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service,

cable service, Internet access service, telecommunications service, or video programming.

(43b) Computer software or digital property that becomes a component part of other computer software or digital property that is offered for sale or of a service that is offered for sale.

(44) Repealed by Session Laws 2013-316, s. 4.1(d), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

(45) Sales of aircraft lubricants, aircraft repair parts, and aircraft accessories to an interstate passenger air carrier for use at its hub.

(45a) Sales to an interstate air business of tangible personal property that becomes a component part of or is dispensed as a lubricant into commercial aircraft during its maintenance, repair, or overhaul. For the purpose of this subdivision, commercial aircraft includes only aircraft that has a certified maximum take-off weight of more than 12,500 pounds and is regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages.

(45b) Sales of the following items to an interstate air courier for use at its hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.

(45c) Sales of aircraft simulators to a company for flight crew training and maintenance training.

(45d) Parts and accessories for use in the repair or maintenance of a qualified aircraft or a qualified jet engine.

(46) Sales of electricity by 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.

(47) An amount charged as a deposit on a beverage container that is returnable to the vendor for reuse when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged.

(48) An amount charged as a deposit on an aeronautic, automotive, industrial, marine, or farm replacement part that is returnable to the vendor for rebuilding or remanufacturing when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged. This exemption does not include tires or batteries.

(49) **(Repealed effective March 1, 2016 – see notes)** Installation charges when the charges are separately stated on 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 at the time of sale.

(50) Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than tobacco and newspapers.

(51) Water delivered by or through main lines or pipes for either commercial or domestic use or consumption.

(52) Items subject to sales and use tax under G.S. 105-164.4, other than electricity, telecommunications service, and ancillary service as defined in G.S. 105-164.3, if all of the following conditions are met:

a. The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.

b. The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.

c. For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number.

(53) Sales to a professional land surveyor of tangible personal property on which custom aerial survey data is stored in digital form or is depicted in graphic form. Data is custom if it was created to the specifications of the professional land surveyor purchasing the property. A professional land surveyor is a person licensed as a surveyor under Chapter 89C of the General Statutes.

(54) The following telecommunications services and charges:

a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).

b. Pay telephone service.

c. 911 charges imposed under G.S. 143B-1403 and remitted to the 911 Fund under that section.

d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.

e. Telecommunications service purchased or provided by a State agency or a unit of local government for the State Network or another data network owned or leased by the State or unit of local government.

(55) Sales of electricity for use at an eligible Internet datacenter and eligible business property to be located and used at an eligible Internet datacenter. As used in this subdivision, "eligible business property" is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of a service included in the business of the primary user of the datacenter, including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet datacenter, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet datacenter, then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(55a) Sales of electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter. As used in this subdivision, "datacenter support equipment" is property that is capitalized for tax purposes under the Code and is used for one of the following purposes:

a. The provision of a service or function included in the business of an owner, user, or tenant of the datacenter.

b. The generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.

c. HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.

d. Hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.

e. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(33c) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment

under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(33c), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(56) Sales to the owner or lessee of an eligible railroad intermodal facility of intermodal cranes, intermodal hostler trucks, and railroad locomotives that reside on the premises of the facility and are used at the facility.

(57) Fuel, electricity, and piped natural gas sold to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to the following:

a. Electricity used at a facility at which the primary activity is not manufacturing.

b. Fuel or piped natural gas that is used solely for comfort heating at a manufacturing facility where there is no use of fuel or piped natural gas in a manufacturing process.

(57a) **(Repealed effective July 1, 2018)** Fuel, piped natural gas, and electricity sold to a person subject to tax on certain tangible personal property pursuant to G.S. 105-187.51B(a)(6) for use in recycling at its facility at which the primary activity is recycling.

(58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality.

(59) Interior design services provided in conjunction with the sale of tangible personal property.

(60) Gross receipts derived from an admission charge to an entertainment activity are exempt as provided in G.S. 105-164.4G.

(61) A motor vehicle service contract.

(61a) The sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

a. A service and a service contract for an item exempt from tax under this Article, except as otherwise provided in this subdivision. Property and services used to fulfill a service or service contract exempt under this sub-subdivision are exempt from tax under this Article. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under subdivision (62a) of this section and fees under sub-subdivision b. of this subdivision.

b. A motor vehicle emissions and safety inspection fee imposed pursuant to G.S. 20-183.7, provided the fee is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.

c. Services performed for a person by a related member.

d. Cleaning of real property, except where the service constitutes a part of the gross receipts derived from the rental of an accommodation subject to tax under G.S. 105-164.4 or for a pool, fish tank, or other similar aquatic feature. Examples of cleaning of real property include custodial services, window washing, mold remediation services, carpet cleaning, removal of debris from gutters, removal of dust and other pollutants from ductwork, and power washing other than for a pool.

e. Services on roads, driveways, parking lots, and sidewalks.

f. Removal of waste, trash, debris, grease, snow, and other similar items from property, other than a motor vehicle. The exemption applies to household and commercial trash collection and removal services. The exemption applies to the removal of septage from property, including motor vehicles, but does not include removal of septage from portable toilets.

g. The following inspections:

1. An inspection performed where the results are included in a report for the sale or financing of real property.

2. An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.

3. An inspection to a system that is a capital improvement under G.S. 105-164.3(2c)f., provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.

h. Alteration and repair of clothing, except where the service constitutes a part of the gross receipts derived from the rental of clothing subject to tax under G.S. 105-164.4 or for alteration and repair of belts and shoes.

i. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.

j. Moving services. For purposes of this exemption, the term "moving services" means a service for hire to transport or relocate a person's existing belongings to or from any destination.

k. Self-service car washes and vacuums.

l. A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.

m. **(Effective until July 1, 2019)** A qualified aircraft or a qualified jet engine.

m. **(Effective July 1, 2019)** Any of the following:

1. A qualified aircraft.
2. A qualified jet engine.
3. An aircraft with a gross take-off weight of more than 2,000 pounds.

n. Funeral-related services, including services for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.

o. Services performed on an animal, such as hoof shoeing and microchipping a pet.

p. A security or similar monitoring contract for real property. The exemption provided in this subdivision does not apply to charges for repair, maintenance, and installation services to repair security, alarm, and other similar monitoring systems for real property.

q. A contract to provide a certified operator for a wastewater system.

r. **(Effective January 1, 2020)** A property management contract.

(61b) Tangible personal property, digital property, and services purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A.

(61c) Installation charges that are a part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing installation services for a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages, or labor purchased from a third party that would otherwise be included in the definition of "purchase price."

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

(62) An item or repair, maintenance, and installation services purchased or used to fulfill a service contract taxable under this Article if the purchaser of the contract is not charged for the item or services. This exemption does not apply

to the purchase of tangible personal property or digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract. For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property that is not deemed to be a component or repair part of the tangible personal property, real property, or digital property for which a service contract is sold to a purchaser.

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

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

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

(62b) The amount of repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine for which the purchaser elects for the seller to collect and remit the tax due under G.S. 105-164.27A(a3).

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

a. Used for packaging, shipment, or delivery of the food and prepared food.

b. Constitute a part of the sale of the food and prepared food.

c. Delivered with the food and prepared food.

(64) Fifty percent (50%) of the sales price of a modular home or a manufactured home, including all accessories attached when delivered to the purchaser.

(65) **(Expires January 1, 2020)** This subdivision expires January 1, 2020. Sales of the following to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series:

a. The sale, lease, or rental of an engine.

b. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an engine, rear-end gears, and any other item that is purchased, leased, or rented and that is exempt from tax under this subdivision or that is allowed a sales tax refund under G.S. 105-164.14A(a)(5).

c. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a "service contract" as defined in G.S. 105-164.3 but may meet the definition of the term "lease or rental" as defined in G.S. 105-164.3.

(65a) **(Expires January 1, 2020)** An engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. This subdivision expires January 1, 2020.

(66) Storage of a motor vehicle, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.

(67) Towing services, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.

(68) Sales of wastewater dispersal products approved by the Department of Health and Human Services under Article 11 of Chapter 130A of the General Statutes.

(69) Sales of non-coin currency, investment metal bullion, and investment coins. For purposes of this subdivision, the following definitions apply:

a. Investment coins. – Numismatic coins or other forms of money and legal tender manufactured of metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

b. Investment metal bullion. – Any elementary precious metal that has been put through a process of smelting or refining and that is in such state or condition that its value depends upon its content and not upon its form. The term does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses.

c. Non-coin currency. – Forms of money and legal tender manufactured of a material other than metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such currency.

(70) Gross receipts derived from a rental of an accommodation are exempt as provided in G.S. 105-164.4F. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1; 1987 (Reg. Sess., 1988), c. 937; 1989, c. 692, ss. 3.5, 3.6; c. 748, s. 1; 1989 (Reg. Sess., 1990), c. 989; c. 1060; c. 1068, ss. 1, 2; 1991, c. 45, s. 17; c. 79, s. 2; c. 618, s. 1; c. 689, s. 314; 1991 (Reg. Sess., 1992), c. 931, ss. 1, 2; c. 935, s. 1; c. 940, s. 1; c. 949, s. 1; c. 1007, s. 44; 1993, c. 484, s. 3; c. 513, s. 11; 1993 (Reg. Sess., 1994), c. 739, s. 1; 1995, c. 390, s. 14; c. 451, s. 1; c. 477, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 646, ss. 4, 5; c. 649, s. 1; 1996, 2nd Ex. Sess., c. 14, ss. 15, 16; 1997-369, s. 2; 1997-370, s. 2; 1997-397, s. 1; 1997-423, s. 3; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1997-506, s. 36; 1997-521, s. 1; 1998-22, s. 6; 1998-55, ss. 9, 15; 1998-98, ss.

14, 14.1, 49, 107; 1998-146, s. 9; 1998-171, s. 10(a), (b); 1998-225, s. 4.3; 1999-337, s. 31; 1999-360, s. 7(a)-(c); 1999-438, ss. 5-12; 2000-120, s. 5; 2000-153, s. 5; 2001-347, s. 2.12; 2001-424, s. 34.23(a); 2001-476, s. 17(e); 2001-509, s. 1; 2001-514, s. 1; 2002-184, s. 9; 2003-284, ss. 45.5, 45.5A; 2003-349, s. 11; 2003-416, ss. 18(a), 21; 2003-431, s. 1; 2004-124, ss. 32B.2, 32B.4; 2005-276, s. 33.9; 2005-435, ss. 30, 31; 2006-19, s. 1; 2006-33, s. 5; 2006-66, s. 24.17(b); 2006-162, ss. 8(a), 8(b); 2006-168, s. 4.2; 2006-252, s. 2.25(b); 2007-244, s. 4; 2007-323, s. 31.23(c); 2007-368, s. 1; 2007-383, s. 6; 2007-397, ss. 10(g), 10(h); 2007-491, s. 44(1)a; 2007-500, s. 1; 2007-527, ss. 10, 27; 2008-107, ss. 28.6(a), 28.20(a); 2009-451, s. 27A.3(f), (k); 2009-511, s. 1; 2010-91, s. 3; 2010-147, s. 6.1; 2011-330, s. 18; 2012-79, s. 1.4; 2013-316, ss. 3.2(a), (b), 3.3(b), 3.4(a), 4.1(d), 5(c), 6(c); 2013-360, s. 7.4(e); 2013-414, ss. 11(a), 58(e); 2014-3, ss. 4.1(e), 5.1(d)-(f), 6.1(c), (f), 8.3(a), (b); 2014-100, s. 37.3(a); 2015-6, ss. 2.12, 2.23(a); 2015-241, ss. 7A.3, 32.18(d), (e); 2015-259, ss. 3(b), 4.1(c), 4.2(d), 5(b), (c), 6(b); 2015-261, ss. 5(a), (b); 2016-5, ss. 3.9(a), (b), 3.11(a), 3.19(b), 3.23(a); 2016-92, ss. 2.1(a), 2.5; 2016-94, ss. 38.2(c), 38.5(i), (p); 2016-123, s. 11.1; 2017-57, ss. 38.8(a), (c), 38.9(b); 2017-102, s. 15.1; 2017-139, s. 1; 2017-181, s. 1; 2017-204, ss. 2.6, 2.9(a), 2.11(b), 2.12(a); 2017-212, s. 7.2(a); 2018-5, ss. 38.5(j), (y).)

§ 105-164.13A. Service charges on food, beverages, or prepared food.

When a service charge is imposed on food, beverages, or prepared food, so much of the service charge that does not exceed twenty percent (20%) of the sales price is considered a tip and is specifically exempted from the tax imposed by this Article if it meets both of the following conditions:

(1) Is separately stated in the price list, menu, or written proposal and also in the invoice or bill.

(2) Is turned over to the personnel directly involved in the service of the food, beverages, or prepared food, in accordance with G.S. 95-25.6. (1979, c. 801, s. 76; 1979, 2nd Sess., c. 1101; 1999-438, s. 13; 2013-414, s. 11(b).)

§ 105-164.13B. Food exempt from tax.

(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

(1) Repealed by Session Laws 2005-276, s. 33.10, effective October 1, 2005.

(2) Dietary supplements.

(3) Food sold through a vending machine.

(4) Prepared food, other than bakery items sold without eating utensils by an artisan bakery. The term "bakery item" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. An artisan bakery is a bakery that meets all of the following requirements:

a. It derives over eighty percent (80%) of its gross receipts from bakery items.

b. Its annual gross receipts, combined with the gross receipts of all related persons, do not exceed one million eight hundred thousand dollars ($1,800,000). For purposes of this subdivision, the term "related person" means a person described in one of the relationships set forth in section 267(b) or 707(b) of the Code.

(5) Soft drinks.

(6) Repealed by Session Laws 2003-284, s. 45.6B, effective January 1, 2004.

(7) Candy.

(b) Administration of Local Food Tax. – The Secretary must administer local sales and use taxes imposed on food as if they were imposed under this Article. This applies to local taxes on food imposed under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws. (1998-212, s. 29A.1(b); 2001-347, s. 2.13; 2001-489, s. 3(b); 2003-284, ss. 45.6, 45.6A, 45.6B; 2003-416, s. 22; 2005-276, s. 33.10; 2008-107, s. 28.19(a); 2009-445, s. 42; 2015-6, s. 2.21.)

§§ 105-164.13C, 105-164.13D: Repealed by Session Laws 2013-316, s. 3.4(a), effective July 1, 2014, and applicable to purchases made on or after July 1, 2014.

§ 105-164.13E. Exemption for farmers.

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

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

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

(2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.

(3) Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that

have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.

(4) A container used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale.

(5) A grain, feed, or soybean storage facility and parts and accessories attached to the facility.

(6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.

c. Defoliants for use on cotton or other crops.

d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

e. Semen.

(7) Baby chicks and poults sold for commercial poultry or egg production.

(8) Any of the following items concerning the housing, raising, or feeding of animals:

a. A commercially manufactured facility to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.

b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure.

(9) A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

(10) Repair, maintenance, and installation services.

(b) **(Effective for taxes imposed for taxable years beginning before July 1, 2017)** Conditional Exemption. – A person who does not meet the definition of a qualifying farmer in subsection (a) of this section may apply to the Department for a conditional exemption certificate under G.S. 105-164.28A. A person with a conditional exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer under subsection (a) of this section. To receive a conditional exemption certificate under this subsection, the person must certify that the person intends to engage in farming operations, as that term is described in subsection (a) of this section, and that the person will timely file State and federal income tax returns that reflect income and expenses

incurred from farming operations during the taxable years that the conditional exemption certificate applies.

A conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period. The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.

A person who purchases items with a conditional exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional exemption certificate for three years following the expiration of the conditional exemption certificate. The Secretary may require a person who has a conditional exemption certificate to provide any other information requested by the Secretary to verify the person met the conditions of this subsection. A person who fails to provide the information requested by the Secretary in a timely manner or who fails to meet the requirements of this subsection becomes liable for any taxes for which an exemption under this subsection was claimed. The taxes become due and payable at the expiration of the conditional exemption certificate, and interest accrues from the date of the original purchase. Additionally, where the person does not timely provide the information requested by the Secretary, the misuse of exemption certificate penalty in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the person made a purchase.

(b) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2017)** Conditional Exemption. – A person who does not meet the definition of a qualifying farmer in subsection (a) of this section may apply to the Department for a conditional exemption certificate under G.S. 105-164.28A. A person with a conditional exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer under subsection (a) of this section. To receive a conditional exemption certificate under this subsection, the person must certify that the person intends to engage in farming operations, as that term is described in subsection (a) of this section, and that the person will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years that the conditional exemption certificate applies.

A conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under

G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period; provided that a person may request a one-year extension of their conditional exemption certificate if the person satisfies all of the following conditions:

(1) The person holds a conditional exemption certificate that is scheduled to expire within 30 days of an extension request.

(2) The person suffers a weather-related disaster that prevents the person from becoming eligible for a qualifying exemption certificate.

(3) The person provides the Department all of the following:

a. Documents showing that, but for the disaster, the person would have earned ten thousand ($10,000) or more in gross sales for the year in which the disaster occurred.

b. Documentation of revenues and expenses relating to the damaged crop.

c. An affidavit from a county extension director or FSA county committee that the disaster occurred in the area of the county in which the person farms.

The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.

A person who purchases items with a conditional exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional exemption certificate for three years following the expiration of the conditional exemption certificate. The Secretary may require a person who has a conditional exemption certificate to provide any other information requested by the Secretary to verify the person met the conditions of this subsection. A person who fails to provide the information requested by the Secretary in a timely manner or who fails to meet the requirements of this subsection becomes liable for any taxes for which an exemption under this subsection was claimed. The taxes become due and payable at the expiration of the conditional exemption certificate, and interest accrues from the date of the original purchase. Additionally, where the person does not timely provide the information requested by the Secretary, the misuse of exemption certificate penalty in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the person made a purchase.

(c) Contract with a Farmer. – A qualifying item listed in subdivisions (5), (8), and (9) of subsection (a) of this section purchased to fulfill a contract with a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A contractor that purchases one of the items allowed an exemption under this section must provide an exemption certificate to the retailer that includes the name of the qualifying farmer or conditional farmer exemption certificate holder and the qualifying farmer or conditional farmer exemption certificate number issued to that holder.

(c1) Services for Farmer. – A qualifying item listed in subdivision (6) of subsection (a) of this section purchased to fulfill a service for a person who holds a qualifying farmer

exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the purchaser and an exemption number issued to the purchaser by the Department pursuant to G.S. 105-164.28A. A person that purchases an item exempt from tax pursuant to this subsection must maintain records to substantiate that an item is used to provide a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.

(d) Definition. – For purposes of this section, the term "taxable year" has the same meaning as defined in G.S. 105-153.3. (2013-316, s. 3.3(a); 2013-363, s. 11.4; 2014-3, s. 3.1(a); 2015-6, s. 2.13(a); 2016-5, s. 3.12(a); 2016-94, s. 38.5(j); 2017-108, s. 20(a); 2018-5, s. 38.5(k).)

§ 105-164.14. Certain refunds authorized.

(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, accessories, service contracts, and repair, maintenance, and installation services 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, accessories, service contracts, and repair, maintenance, and installation services purchased by the applicant inside or outside this State during the refund period.
(2) The purchase price of the taxable items listed in subdivision (1) of this subsection. For purposes of this subdivision, the term "taxable" is based on the imposition of tax on the items and services in the State.
(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 mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated 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.

(a1) Repealed by Session Laws 2010-166, s. 1.17, effective July 1, 2010.

(a2) Utility Companies. – A utility company 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 accessories for a railway car or locomotive the utility company operates. 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, 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 railway cars and locomotives were operated both inside and outside this State during the refund period.
(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 the number of miles the applicant operated its railway cars and locomotives in this State during the refund period to the number of miles it operated them 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.

(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or

annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars ($31,700,000).

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority or other public hospital described in Article 2 of Chapter 131E of the General Statutes.

(2) An organization that is exempt from income tax under section 501(c)(3) of the Code, other than an organization that is properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities:
   a. Community Improvement and Capacity Building.
   b. Public and Societal Benefit.
   c. Mutual and Membership Benefit.

(2a) Volunteer fire departments and volunteer emergency medical services squads that are one or more of the following:
   a. Exempt from income tax under the Code.
   b. Financially accountable to a city as defined in G.S. 160A-1, a county, or a group of cities and counties.

(2b) An organization that is a single member LLC that is disregarded for income tax purposes and satisfies all of the following conditions:
   a. The owner of the LLC is an organization that is exempt from income tax under section 501(c)(3) of the Code.
   b. The LLC is a nonprofit entity that would be eligible for an exemption under 501(c)(3) of the Code if it were not disregarded for income tax purposes.
   c. The LLC is not an organization that would be properly classified in any of the major group areas of the National Taxonomy of Exempt Entities listed in subdivision (2) of this subsection.

(3) Repealed by Session Laws 2008-107, s. 28.22(a), effective July 1, 2008, and applicable to purchases made on or after that date.

(4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.

(5) A university affiliated nonprofit organization that procures, designs, constructs, or provides facilities to, or for use by, a constituent institution of The University of North Carolina. For purposes of this subdivision, a nonprofit organization includes an entity exempt from taxation as a disregarded entity of the nonprofit organization.

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.

(13) A regional sports authority created pursuant to G.S. 160A-479.

(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to (i) provide fire protection, emergency services, or police protection or (ii) operate a public broadcasting television station.

(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.

(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Health Care System.

(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes.

(23) A special district created under Article 43 of this Chapter.

(24) A public library created pursuant to an act of the General Assembly or established pursuant to G.S. 153A-270.

(25) A soil and water conservation district organized under Chapter 139 of the General Statutes.

(26) A district confinement facility created pursuant to G.S. 153A-219, including a local act modifying G.S. 153A-219.

(d) Late Applications. – Refunds applied for more than three years after the due date are barred.

(d1) Alcoholic Beverages. – The refunds authorized by this section do not apply to purchases of alcoholic beverages, as defined in G.S. 18B-101.

(d2) A city subject to the provisions of G.S. 160A-340.5 is not allowed a refund of sales and use taxes paid by it under this Article for purchases related to the provision of communications service as defined in Article 16A of Chapter 160A of the General Statutes.

(e) State Agencies. – The State is allowed quarterly refunds of local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired for use by the State agency. This subsection does not apply to a State agency that is ineligible for a sales and use tax exemption number under G.S. 105-164.29A(a).

A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:

(1) The date the property was purchased.

(2) The type of property purchased.
(3) The project for which the property was used.
(4) If the property was purchased in this State, the county in which it was purchased.
(5) If the property was not purchased in this State, the county in which the property was used.
(6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund.

(f) through (h) Repealed by Session Laws 2010-166, s. 1.17, effective July 1, 2010.

(i) Repealed by Session Laws 1999-360, s. 5, for taxes paid on or after January 1, 2008.

(j) through (o) Repealed by Session Laws 2010-166, s. 1.17, effective July 1, 2010.

(p) Not an Overpayment. Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134; 1965, c. 1006; 1967, c. 1110, s. 6; 1969, c. 1298, s. 1; 1971, cc. 89, 286; 1973, c. 476, s. 193; 1977, c. 895, s. 1; 1979, c. 47; c. 801, ss. 77, 79-82; 1983, c. 594, s. 1; c. 891, s. 13; 1983 (Reg. Sess., 1984), c. 1097, s. 7; 1985, cc. 431, 523; 1985 (Reg. Sess., 1986), c. 863, s. 5; 1987, c. 557, ss. 8, 9; c. 850, s. 16; 1987 (Reg. Sess., 1988), c. 1044, s. 5; 1989, c. 168, s. 5; c. 251; c. 780, s. 1.1; 1989 (Reg. Sess., 1990), c. 936, s. 4; 1991, c. 356, s. 1; c. 689, s. 190.1(b); 1991 (Reg. Sess., 1992), c. 814, s. 1; c. 917, s. 1; c. 1030, s. 25; 1995, c. 17, s. 8; c. 21, s. 1; c. 458, s. 7; c. 461, s. 13; c. 472, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 15.7(a); 1997-340, s. 1; 1997-393, s. 2; 1997-423, s. 1; 1997-426, s. 5; 1997-502, s. 3; 1998-55, ss. 16, 17; 1998-98, s. 15; 1998-212, ss. 29A.4(a), 29A.14(i), 29A.18(b); 1999-360, ss. 4, 5(a), (b), 9; 1999-438, s. 14; 2000-56, s. 9; 2000-140, s. 92.A(c); 2001-414, s. 1; 2001-474, s. 7; 2003-416, ss. 18(b)-(e), 23; 2003-431, ss. 2, 3; 2003-435, 2nd Ex. Sess., s. 4.1; 2004-110, s. 5.1; 2004-124, s. 32B.1; 2004-170, s. 21(a); 2004-204, 1st Ex. Sess., s. 3; 2005-276, ss. 7.27(a), 7.51(a), 33.12; 2005-429, s. 2.12; 2005-435, ss. 32(a), 33(a)-(c), 61, 61.1; 2006-33, s. 6; 2006-66, ss. 24.6(a), (b), (c), 24.10(b), 24.13(b), 24A.1(a); 2006-162, ss. 9, 27; 2006-168, s. 3.1; 2006-252, ss. 2.2, 2.3; 2007-323, ss. 31.10(a), 31.20(b), 31.23(d); 2007-345, s. 14.6(a); 2007-491, s. 44(1)a; 2008-107, ss. 28.22(a), 28.23(a), (b); 2008-118, s. 3.10(a); 2008-154, s. 1; 2009-233, s. 1; 2009-445, ss. 13, 14(a); 2009-527, s. 2(d); 2009-550, s. 4.1; 2010-31, s. 31.5(c), (d); 2010-91, s. 4; 2010-95, s. 4(a); 2010-166, s. 1.17; 2011-84, s. 1(b); 2011-330, s. 26(a); 2012-79, s. 2.11; 2013-316, s. 3.4(b); 2013-414, ss. 12, 42(a), 54(a); 2014-3, s. 8.2(a); 2014-20, s. 1; 2015-235, s. 1; 2016-5, s. 3.22(b); 2017-204, ss. 2.7(a), 2.9(b); 2018-5, s. 38.5(*l*).)

§ 105-164.14A. Economic incentive refunds.

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) **(Repealed for purchases made on or after January 1, 2016)** Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after January 1, 2016.

(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Repealed by Session Laws 2016-5, s. 3.14, effective May 11, 2016.

(4) **(Repealed for purchases made on or after January 1, 2020)** Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation gasoline or jet fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2020.

(5) **(Repealed for purchases made on or after January 1, 2020)** Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2020.

(6) **(Repealed for purchases made on or after January 1, 2014)** Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed for purchases made on or after January 1, 2014. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) **(Repealed for purchases made on or after January 1, 2038)** Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038.

(8) Transformative projects. – An owner or lessee of a business that is the recipient of a grant under the Job Development Investment Grant Program on or before June 30, 2019, for a transformative project as defined in G.S. 143B-437.51(9a) is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(b) Administration. – A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(c) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and by taxpayer:

(1) The number of taxpayers claiming a refund allowed in this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed.

(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21. (2010-166, s. 1.18; 2011-330, ss. 15(c), 20(a), 26(b); 2012-36, s. 11(a); 2013-316, s. 3.5(a); 2015-259, s. 6(d); 2016-5, s. 3.14; 2017-39, s. 7; 2017-57, s. 38.9A(a).)

§ 105-164.14B: Repealed pursuant to former subsection (f) of this section, effective for sales made on or after January 1, 2014.

Part 4. Reporting and Payment.

§ 105-164.15: Repealed by Session Laws 2010-95, s. 13, effective July 17, 2010.

§ 105-164.15A. Effective date of tax changes.

(a) General Rate Items. – The effective date of a tax change for tangible personal property, digital property, or services taxable under this Article is administered as follows:

(1) For a taxable item that is provided and billed on a monthly or other periodic basis:

a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.

b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.

(2) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date, except amounts received for items purchased to fulfill a real property contract for a capital improvement entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date.

(b) Combined General Rate Items. – The effective date of a rate change for an item that is taxable under this Article at the combined general rate is administered as follows:

(1) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date of a change in the State general rate of tax set in G.S. 105-164.4.

(1a) For a taxable item that is provided and billed on a monthly or other periodic basis:

a. A tax increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.

b. A tax rate decrease applies to bills rendered on or after the effective date.

(2) For an increase in the authorization for local sales and use taxes, the date on which local sales and use taxes authorized by Subchapter VIII of this Chapter for every county become effective in the first county or group of counties to levy the authorized taxes.

(3) For a repeal in the authorization for local sales and use taxes, the effective date of the repeal. (2005-276, s. 33.13; 2006-162, s. 10; 2007-323, s. 31.17(c); 2009-451, s. 27A.3(l); 2011-330, s. 27; 2013-316, s. 3.2(c); 2016-92, s. 2.6; 2017-204, s. 2.4(d); 2018-5, s. 38.5(m).)

§ 105-164.16. Returns and payment of taxes.

(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property, digital property, or services that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars ($100.00) but less than twenty thousand dollars ($20,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(b2) Prepayment. – A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes must make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return 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.

(b3) Category. – The Secretary must monitor the amount of State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(c) Repealed by Session Laws 2001-427, s. 6(a), effective January 1, 2002, and applicable to taxes levied on or after that date.

(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases the items listed in this subsection outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. The items are:

(1) Tangible personal property other than a boat or an aircraft.
(2) Digital property.
(3) A service.

(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined rate does not change, sales and use taxes payable on the following periodic payments are reportable in accordance with the changed State and local rates:

(1) Lease or rental payments billed after the effective date of the changes.
(2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis. (1957, c. 1340, s.

5; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 801, s. 83; 1983 (Reg. Sess., 1984), c. 1097, s. 14; 1985, c. 656, s. 26; 1985 (Reg. Sess., 1986), c. 1007; 1987, c. 557, s. 6; 1989 (Reg. Sess., 1990), c. 945, s. 1; 1991, c. 690, s. 4; 1993, c. 450, s. 7; 1997-77, s. 1; 1998-121, s. 1; 1999-341, s. 1; 2000-120, s. 11; 2001-347, s. 2.14; 2001-414, s. 18; 2001-427, s. 6(a); 2001-430, s. 7; 2002-184, ss. 10, 11; 2003-284, ss. 44.1, 45.8; 2003-416, s. 26; 2005-276, s. 33.24; 2006-162, s. 5(b); 2006-33, s. 9; 2007-527, ss. 11, 12; 2008-134, s. 11; 2009-451, s. 27A.3(b), (c), (m); 2010-31, s. 31.3(a)-(d); 2010-95, s. 42; 2011-330, s. 21.)

§ 105-164.16A. Reporting option for prepaid meal plans.

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

A retailer who elects this option must report to the food service contractor with whom it has an agreement the gross receipts a person pays to the retailer for a prepaid meal plan. The retailer must report the gross receipts on an accrual basis of accounting, as required under G.S. 105-164.20. The retailer must send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan. Tax payments received by a food service contractor from a retailer are held in trust by the food service contractor for remittance to the Secretary. A food service contractor that receives a tax payment from a retailer must remit the amount received to the Secretary. A food service contractor is not liable for tax due but not received from a retailer. A retailer that does not send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan is liable for the amount of tax the retailer fails to send to the food service contractor. (2014-3, s. 4.1(f); 2015-6, s. 2.14(a).)

§§ 105-164.17 through 105-164.18: Repealed by Session Laws 1993, c. 450, ss. 8, 9.

§ 105-164.19. Extension of time for making returns and payment.

The Secretary for good cause may extend the time for filing any return under the provisions of this Article and may grant additional time within which to file the return and pay the tax due pursuant to G.S. 105-263(b). (1957, c. 1340, s. 5; 1973, c. 476, s. 193;

1977, c. 1114, s. 10; 1985, c. 656, s. 30; 2007-491, s. 44(1)a; 2013-414, s. 1(f); 2018-5, s. 38.5(n).)

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

(a) Basis Selected. – Except as provided in subsection (b) of this section, a retailer may report sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use the basis selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected.

(b) Accrual Basis. – For purposes of reporting and remitting sales tax under this Article, a retailer listed in this subsection must report the gross receipts it derives from the taxable transaction listed in this subsection on an accrual basis of accounting. The following retailers must report gross receipts as provided in this subsection:

(1) A retailer who sells electricity, piped natural gas, or telecommunications service. A sale of electricity, piped natural gas, or telecommunications service is considered to accrue when the retailer bills its customer for the sale.

(2) A retailer who derives gross receipts from a prepaid meal plan, notwithstanding that the retailer may report tax on the cash basis for other sales at retail and notwithstanding that the revenue has not been recognized for accounting purposes.

(3) A retailer who sells or derives gross receipts from a service contract, as provided in G.S. 105-164.4I(d). (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1983 (Reg. Sess., 1984), c. 1097, s. 15; 1998-22, s. 7; 2001-430, s. 8; 2015-6, s. 2.14(b).)

§ 105-164.21. Repealed by Session Laws 1987, c. 622, s. 10.

§ 105-164.21A: Repealed by Session Laws 2013-316, s. 4.1(a), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

§ 105-164.21B: Repealed by Session Laws 2006-151, s. 9, effective January 1, 2007.

Part 5. Records Required to Be Kept.

§ 105-164.22. Record-keeping requirements, inspection authority, and effect of failure to keep records.

Retailers, wholesale merchants, and consumers must keep records that establish their tax liability under this Article. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day.

A retailer's records must include records of the retailer's gross income, gross sales, net taxable sales, and all items purchased for resale. Failure of a retailer to keep records that establish that a sale is exempt under this Article subjects the retailer to liability for tax on the sale.

A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the price at which the wholesale merchant sold the item. Failure of a wholesale merchant to keep these records for the sale of an item subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from inside or outside the State. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1998-98, s. 51; 2009-451, s. 27A.3(n); 2016-5, s. 3.15; 2018-5, s. 38.5(t).)

§ 105-164.23: Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

§ 105-164.24: Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

§ 105-164.25: Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

§ 105-164.26. Presumption that sales are taxable.

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, the following presumptions apply:

(1) That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required in this Article.

(2) That tangible personal property sold by a person for delivery in this State is sold for storage, use, or other consumption in this State.

(3) That tangible personal property delivered outside this State and brought to this State by the purchaser is for storage, use, or consumption in this State.

(4) That digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.

(5) That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State. (1957, c. 1340, s. 5; 1998-98, s. 108; 2009-451, s. 27A.3(p).)

§ 105-164.27. Repealed by Session Laws 1961, c. 826, s. 2.

§ 105-164.27A. Direct pay permit.

(a) General. – A general direct pay permit authorizes its holder to purchase certain 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 general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. 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 sales of electricity, piped natural

gas, video programming, spirituous liquor, or the gross receipts derived from rentals of accommodations.

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 stored, used, or consumed in the State is not known at the time of the purchase and a different tax consequence applies depending on where the item is used in the State.

(2) The manner in which the item will be stored, used, or consumed in the State is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable in the State.

(a1) Direct Mail. – A person who purchases direct mail may apply to the Secretary for a direct pay permit for the purchase of direct mail. A direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail. A person who purchases direct mail under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary.

(a2) Qualified Jet Engine. – A person who purchases a qualified jet engine may apply to the Secretary for a direct pay permit for the purchase of a qualified jet engine. A direct pay permit issued for a qualified jet engine does not apply to any purchase other than the purchase of a qualified jet engine. The maximum use tax on a qualified jet engine is two thousand five hundred dollars ($2,500). A person who purchases a qualified jet engine under a direct pay permit must file a return and pay the tax due monthly to the Secretary.

(a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its holder to purchase tangible personal property, digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the item or services from the permit holder. A person who purchases the property or services under a direct pay permit must file a return and pay the tax due to the Secretary in accordance with G.S. 105-164.14. A permit holder is allowed a use tax exemption on one or more of the following: (i) the installation charges that are a part of the sales price of tangible personal property or digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a boat, an aircraft, or a qualified jet engine.

In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or digital property for a boat, an aircraft, or a qualified jet engine on the invoice

or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

The amount of the use tax exemption is the amount of the installation charges and sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars ($25,000).

(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.

(c) Application. – An application for a direct pay permit must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the permit.

(d) Revocation. – A direct pay permit is valid until the holder returns it to the Secretary or the Secretary revokes it. The Secretary may revoke a direct pay permit if the holder of the permit does not file a sales and use tax return on time, does not pay sales and use tax on time, or otherwise fails to comply with the sales and use tax laws. (2000-120, s. 1; 2001-414, s. 20; 2001-430, s. 9; 2002-72, s. 18; 2003-284, s. 45.9; 2003-416, s. 16(b); 2006-33, s. 7; 2009-451, s. 27A.3(q); 2012-79, s. 2.12; 2013-414, s. 13; 2015-259, s. 4.2(e); 2016-94, s. 38.5(m); 2017-204, s. 2.11(a); 2018-5, s. 38.5(o).)

§ 105-164.28. Certificate of exemption.

(a) Relief From Liability. – Except as provided in subsection (b) of this section, a seller is not liable for the tax otherwise applicable if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following requirements:

(1) For a sale made in person, the seller obtains a certificate of exemption or a blanket certificate of exemption from a purchaser with which the seller has a recurring business relationship. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and state the purchaser's name, address, certificate of registration number, reason for exemption, and type of business. For purposes of this subdivision, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller

must obtain and maintain the same information required had a certificate been provided by the purchaser.

(2) Repealed by Session Laws 2013-414, s. 43(a), effective August 23, 2013.

(3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, certificate of registration number, reason for exemption, and type of business and maintains this information in a retrievable format in its records. If a certificate of exemption is provided electronically for a remote sale, the requirements of subdivision (1) of this subsection apply except the electronic certificate is not required to be signed by the purchaser.

(4) In the case of drop shipment sales, a third-party vendor obtains a certificate of exemption provided by its customer or any other acceptable information evidencing qualification for a resale exemption, regardless of whether the customer is registered to collect and remit sales and use tax in the State.

(b) Substantiation Request. – If the Secretary determines that a certificate of exemption or the required data elements obtained by the seller are incomplete, the Secretary may request substantiation from the seller. A seller is not required to verify that a certificate of registration number provided by a purchaser is correct. If a seller does one of the following within 120 days after a request for substantiation by the Secretary, the seller is not liable for the tax otherwise applicable:

(1) Obtains a fully completed certificate of exemption from the purchaser provided in good faith. The certificate is provided in good faith if it claims an exemption that meets all of the following conditions:

a. It was statutorily available in this State on the date of the transaction.

b. It could be applicable to the item being purchased.

c. It is reasonable for the purchaser's type of business.

(2) Obtains other information to establish the transaction was not subject to tax.

(c) Fraud. – The relief from liability under this section does not apply to a seller who does any of the following:

(1) Fraudulently fails to collect tax.

(2) Solicits purchasers to participate in the unlawful claim of an exemption.

(3) Accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller, and the claimed exemption is not available in this State.

(4) Had knowledge or had reason to know at the time information was provided relating to the exemption claimed that the information was materially false.

(5) Knowingly participated in activity intended to purposefully evade tax properly due on the transaction.

(d) Purchaser's Liability. – A purchaser who does not resell an item purchased under a certificate of exemption is liable for any tax subsequently determined to be due on the sale.

(e) Renewal of Information. – The Secretary may not require a seller to renew a blanket certificate of exemption or to update exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more

than 12 months elapse between sales transactions. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 914, s. 1; 2000-120, s. 6; 2005-276, s. 33.15; 2009-451, s. 27A.3(r); 2011-330, s. 28; 2013-414, s. 43(a).)

§ 105-164.28A. Other exemption certificates.

(a) Authorization. – The Secretary may require a person who purchases an item that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the item to obtain an exemption certificate from the Department to receive the exemption or preferential rate. The Department must issue a preferential rate or use-based exemption number to a person who qualifies for the exemption or preferential rate. A person who no longer qualifies for a preferential rate or use-based exemption number must notify the Secretary within 30 days to cancel the number.

An exemption certificate issued by the purchaser authorizes a retailer to sell an item to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who no longer qualifies for an exemption certificate must give notice to each seller that may rely on the exemption certificate on or before the next purchase. A person who purchases an item under an exemption certificate is liable for any tax due on the purchase if the Department determines that the person is not eligible for the exemption certificate or if the person purchased items that do not qualify for an exemption under the exemption certificate. The liability is relieved when the seller obtains the purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of exemption. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of exemption.

(c) Administration. – This section shall be administered in accordance with G.S. 105-164.28. Additionally, the provisions of this section may also apply to a conditional exemption certificate issued to a person in accordance with G.S. 105-164.13E. (2002-184, s. 12; 2009-451, s. 27A.3(s); 2013-414, s. 43(b); 2014-3, s. 3.1(b).)

§ 105-164.29. Application for certificate of registration by wholesale merchants, retailers, and facilitators.

(a) Requirement and Application. – Before a person may engage in business as a retailer or a wholesale merchant or when a facilitator is liable for tax under this Article, the person must obtain a certificate of registration. To obtain a certificate of registration, a person must register with the Department. A person who has more than one business is required to obtain only one certificate of registration for each legal entity to cover all operations of each business throughout the State. An application for registration must be signed as follows:

(1) By the owner, if the owner is an individual.

(2) By a manager, member, or company official, if the owner is a limited liability company.

(2a) By a manager, member, or partner, if the owner is a partnership.

(3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application.

(b) Issuance. – A certificate of registration is not assignable and is valid only for the person in whose name it is issued. A copy of the certificate of registration must be displayed at each place of business.

(c) Term. – A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a person who makes taxable sales or a person liable for tax under this Article becomes void if, for a period of 18 months, the person files no returns or files returns showing no sales. A certificate of registration issued to a seller that contracts with a certified service provider pursuant to G.S. 105-164.42I and that is a model one seller as defined in the Streamlined Agreement does not become void if the certified service provider files returns for the seller showing no sales for a period for which a certificate could become void under this subsection.

(d) Revocation. – The failure of a wholesale merchant or retailer to comply with this Article or G.S. 14-401.18 or the failure of a facilitator to comply with this Article is grounds for revocation of the person's certificate of registration. Before the Secretary revokes a person's certificate of registration, the Secretary must notify the person that the Secretary proposes to revoke the certificate of registration and that the proposed revocation will become final unless the person objects to the proposed revocation and files a request for a Departmental review within the time set in G.S. 105-241.11 for requesting a Departmental review of a proposed assessment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20. The procedures in Article 9 of this Chapter for review of a proposed assessment apply to the review of a proposed revocation.

(e) Definition. – For purposes of this section, the term "person" means a wholesale merchant, a retailer, or a facilitator. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1084; 1991, c. 690, s. 5; 1993, c. 354, s. 17; c. 539, s. 705; 1994, Ex. Sess., c. 24, s. 14(c); 1999-333, s. 8; 2000-140, s. 67(b); 2007-491, s. 19; 2009-451, s. 27A.3(t); 2014-3, s. 14.9(b); 2015-6, s. 2.15; 2017-39, s. 8.)

§ 105-164.29A. State government exemption process.

(a) Application. – To be eligible for the exemption provided in G.S. 105-164.13(52), a State agency must obtain from the Department a sales tax exemption number. The application for exemption must be in the form required by the Secretary, be signed by the State agency's head, and contain any information required by the Secretary. The Secretary must assign a sales tax exemption number to a State agency that submits a proper application. This section does not apply to any of the following State agencies:

(1) An occupational licensing board, as defined in G.S. 93B-1.

(2) An entity listed in G.S. 105-164.14(c).

(b) Liability. – A State agency that does not use the items purchased with its exemption number must pay the tax that should have been paid on the items purchased, plus interest calculated from the date the tax would otherwise have been paid. (2003-431, s. 4; 2004-170, s. 22; 2016-5, s. 3.22(a).)

§ 105-164.29B. Information to counties and cities.

The Secretary must give information on refunds of tax made under this Article to a designated county or city official within 30 days after the official makes a written request to the Secretary for the information. For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to all the counties in which the city is located. The list must include the name and address of each of these claimants and the amount of the refund received from each county covered by the request.

A claimant that has received a refund under this Article of tax paid to a county must give information on the refund to a designated official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the official to verify the request. If a claimant determines that a refund it has received under this Article is incorrect, the claimant must file an amended request for a refund.

For purposes of this section, a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information given to a county or city official under this section is not a public record and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1. (2010-166, s. 1.20.)

Part 6. Examination of Records.

§ 105-164.30. Secretary or agent may examine books, etc.

For the purpose of enforcing the collection of the tax levied by this Article, the Secretary or his duly authorized agent is authorized to examine at all reasonable hours during the day the books, papers, records, documents or other data of all retailers or wholesale merchants bearing upon the correctness of any return or for the purpose of filing a return where none has been made as required by this Article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness fails to obey any summons to appear before the Secretary or his authorized agent, or refuses to testify or answer any material question or to produce any book, record, paper, or other data when required to do

so, the Secretary or his authorized agent shall report the failure or refusal to the Attorney General or the district solicitor, who shall thereupon institute proceedings in the superior court of the county where the witness resides to compel obedience to any summons of the Secretary or his authorized agent. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts, to be paid from the proper appropriation for the administration of this Article.

In the event any retailer or wholesale merchant fails or refuses to permit the Secretary or his authorized agent to examine his books, papers, accounts, records, documents or other data, the Secretary may require the retailer or wholesale merchant to show cause before the superior court of the county in which said taxpayer resides or has its principal place of business as to why the books, records, papers, documents, or data should not be examined and the superior court shall have jurisdiction to enter an order requiring the production of all necessary books, records, papers, documents, or data and to punish for contempt any person who violates the order. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1998-98, s. 52; 2013-414, s. 1(g); 2016-5, s. 3.16.)

§ 105-164.31: Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

§ 105-164.32. Incorrect returns; estimate.

If a retailer, a wholesale merchant, a facilitator, or a consumer fails to file a return and pay the tax due under this Article or files a grossly incorrect or false or fraudulent return, the Secretary must estimate the tax due and assess the retailer, the wholesale merchant, the facilitator, or the consumer based on the estimate. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 2001-414, s. 21; 2009-451, s. 27A.3(u); 2018-5, s. 38.5(p).)

Part 7. Failure to Make Returns; Overpayments.

§§ 105-164.33 through 105-164.34: Repealed by Session Laws 1963, c. 1169, s. 3.

§ 105-164.35: Repealed by Session Laws 2013-414, s. 14, effective August 23, 2013.

§ 105-164.36. Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-164.37. Bankruptcy, receivership, etc.

If any taxpayer subject to the provisions of this Article goes into bankruptcy, receivership or turns over his stock of merchandise by voluntary transfer to creditors, the tax liability under this Article shall constitute a prior lien upon such stock of merchandise and shall become subject to levy under execution and it shall be the duty of the transferee in any such case to retain the amount of the tax due from the first sales of such stock of merchandise and pay the same to the Secretary. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

§ 105-164.38. Tax is a lien.

(a) The tax imposed by this Article is a lien upon all personal property of any person who is required by this Article to obtain a certificate of registration to engage in business and who stops

engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business must file the return required by this Article within 30 days after transferring the business, transferring the stock of goods of the business, or going out of business.

(b) Any person to whom the business or the stock of goods was transferred must withhold from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due until the person selling the business or stock of goods produces a statement from the Secretary showing that the taxes have been paid or that no taxes are due. If the person who buys a business or stock of goods fails to withhold an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, the buyer is personally liable for the unpaid taxes to the extent of the greater of the following:

(1) The consideration paid by the buyer for the business or the stock of goods.

(2) The fair market value of the business or the stock of goods.

(c) Assessment. – The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property expires one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, the assessment procedures in Article 9 of this Chapter apply to a person who buys a business or the stock of goods of a business to the same extent as if the person had incurred the original tax liability. (1957, c. 1340, s. 5; 1963, c. 1169, s. 3; 1973, c. 476, s. 193; 1991, c. 690, s. 6; 1991 (Reg. Sess., 1992), c. 949, s. 2; 2000-140, s. 67(c); 2007-491, s. 20.)

§ 105-164.39. Attachment.

In the event any retailer or wholesale merchant is delinquent in the payment of the tax herein provided for, the Secretary may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such retailer or wholesale merchant or owing any debts to such taxpayer at the time of the receipt by them of such notice and thereafter any person so notified shall neither transfer nor make any other disposition of such credits, other personal property or debts until the Secretary shall have consented to a transfer or disposition or until 30 days shall have elapsed from and after the receipt of such notice. All persons so notified must within five days after receipt of such notice advise the Secretary of any and all such credits, other personal property or debts in their possession, under their control or owing by them as the case may be. The remedy provided by this section shall be cumulative and optional and in addition to all other remedies now provided by law for the collection of taxes due the State. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

§ 105-164.40. Jeopardy assessment.

If the Secretary is of the opinion that the collection of any tax or any amount of tax required to be collected and paid to the State under this Article will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including interest and penalties. In the case of a tax for a current period, the Secretary may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the time otherwise

allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall be immediately due and payable and proceedings for the collection shall commence at once and if any such tax, penalty or interest is not paid upon demand of the Secretary, he shall forthwith cause a levy to be made on the property of the taxpayer or, in his discretion the Secretary may require the taxpayer to file such indemnity bond as in his judgment may be sufficient to protect the interest of the State. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

§ 105-164.41: Repealed by Session Laws 2011-330, s. 38, effective June 27, 2011.

§ 105-164.42: Repealed by Session Laws 1959, c. 1259, s. 9.

Part 7A. Uniform Sales and Use Tax Administration Act.

§ 105-164.42A. Short title.

This Part is the "Uniform Sales and Use Tax Administration Act" and may be cited by that name. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42B. Definitions.

The following definitions apply in this Part:

(1) Agreement. – Streamlined Agreement, as defined in G.S. 105-164.3.
(2) Certified automated system. – Software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
(3) Certified service provider. – An agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.
(4) Member state. – A state that has entered into the Agreement.
(5) Person. – Defined in G.S. 105-228.90.
(6) Sales tax. – The tax levied in G.S. 105-164.4.
(7) Seller. – A person making sales, leases, or rentals of personal property or services.
(8) State. – The term "this State" means the State of North Carolina. Otherwise, the term "state" means any state of the United States and the District of Columbia.
(9) Use tax. – The tax levied in G.S. 105-164.6. (2001-347, s. 1.3; 2005-276, ss. 33.16, 33.31.)

§ 105-164.42C. Authority to enter Agreement.

The Secretary is authorized to enter into the Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The Secretary may act jointly with other member states to establish standards for certification of a certified service provider and a certified automated system and to establish performance standards for multistate sellers.

The Secretary is authorized to represent this State before the other member states. The Secretary may take any other actions reasonably required to implement this Part, including the joint procurement with other member states of goods and services in furtherance of the Agreement. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42D. Relationship to North Carolina law.

No provision of the Agreement authorized by this Part invalidates or amends any provision of the law of this State. Adoption of the Agreement by this State does not amend or modify any law of this State. Implementation of a condition of the Agreement in this State must be made pursuant to an act of the General Assembly. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42E. Agreement requirements.

The Secretary may not enter into the Agreement unless the Agreement requires each state to abide by the following requirements:

(1) Uniform state rate. – The Agreement must set restrictions to achieve more uniform state rates through the following:
   a. Limiting the number of state rates.
   b. Limiting maximums on the amount of state tax that is due on a transaction.
   c. Limiting thresholds on the application of a state tax.

(2) Uniform standards. – The Agreement must establish uniform standards for all of the following:
   a. The sourcing of transactions to taxing jurisdictions.
   b. The administration of exempt sales.
   c. The allowances a seller can take for bad debts.
   d. Sales and use tax returns and remittances.

(3) Uniform definitions. – The Agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(4) Central registration. – The Agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(5) No nexus attribution. – The Agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(6) Local sales and use taxes. – The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through one or more of the following:
   a. Restricting variances between the state and local tax bases.
   b. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
   c. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
   d. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(7) Monetary allowances. – The Agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(8) State compliance. – The Agreement must require each state to certify compliance with the terms of the Agreement before becoming a member and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.

(9) Consumer privacy. – The Agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42F. Cooperating sovereigns.

The Agreement authorized by this Part is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the laws of each member state. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42G. Effect of Agreement.

Entry of this State into the Agreement does not create a cause of action or a defense to an action. No person may challenge any action or inaction by a department, agency, or other instrumentality of this State, or a political subdivision of this State, on the ground that the action or inaction is inconsistent with the Agreement. No law of this State, or its application, may be declared invalid on the ground that the provision or application is inconsistent with the Agreement. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42H. Certification of certified automated system and effect of certification.

(a) Certification. – The Secretary may certify a software program as a certified automated system if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on the sourcing principles in G.S. 105-164.4B.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.

(3) Repealed by Session Laws 2006-33, s. 12, effective June 1, 2006.

(4) The amount of tax to be remitted for each taxpayer for a reporting period.

(5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Liability. – A seller may choose to use a certified automated system in performing its sales tax administration functions. A seller that uses a certified automated system is liable for sales and use taxes due on transactions it processes using the certified automated system except for underpayments of tax attributable to errors in the functioning of the system. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable for underpayments of tax attributable to errors in the functioning of the system. (2000-120, s. 2; 2001-347, ss. 1.1, 1.3; 2005-276, s. 33.31; 2006-33, s. 12.)

§ 105-164.42I. Contract with certified service provider and effect of contract.

(a) Certification. – The Secretary may certify an entity as a certified service provider if the entity meets all of the following requirements:

(1) The entity uses a certified automated system.

(2) The entity has agreed to update its program upon notification by the Secretary.

(3) The entity integrates its certified automated system with the system of a seller for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.

(4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.

(5) The entity agrees to file sales and use tax returns on behalf of the sellers for whom it collects tax.

(6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

(b) Contract. – The Secretary may contract or authorize in writing the Streamlined Sales Tax Governing Board to contract on behalf of the Secretary with a certified service provider for the collection and remittance of sales and use taxes. A certified service provider must file with the Secretary or the Streamlined Sales Tax Governing Board one of the following in the amount set by the Secretary: (i) a bond; (ii) an irrevocable letter of credit; or (iii) evidence of a certificate of deposit. A bond, irrevocable letter of credit, or certificate of deposit must be conditioned upon compliance with the contract, be payable to the State or the Streamlined Sales Tax Governing Board, and be in the form required by the Secretary or the Streamlined Sales Tax Governing Board. The amount a certified service provider charges under the contract is a cost of collecting the tax and is payable from the amount collected.

(c) Liability. – A seller may contract with a certified service provider to collect and remit sales and use taxes payable to the State on sales made by the seller. A certified service provider with whom a seller contracts is the agent of the seller. As the seller's agent, the certified service provider, rather than the seller, is liable for sales and use taxes due this State on all sales transactions the certified service provider processes for the seller unless the seller misrepresents the type of products it sells or commits fraud. A seller that misrepresents the type of products it sells or commits fraud is liable for taxes not collected as a result of the misrepresentation or fraud.

(d) Audit and Review. – In the absence of misrepresentation or fraud, a seller that contracts with a certified service provider is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The State may perform a system check of a seller and review a seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider. A certified service provider is subject to audit. (2000-120, s. 2; 2001-347, ss. 1.1, 1.3; 2005-276, s. 33.31; 2013-414, s. 44; 2016-5, s. 3.18.)

§ 105-164.42J. Performance standard for multistate seller.

The Secretary may establish a performance standard for a seller that is engaged in business in this State and at least 10 other states and has developed a proprietary system to determine the amount of sales and use taxes due on transactions. A seller that enters into an agreement with the Secretary that establishes a performance standard for that system is liable for the failure of the system to meet the performance standard. (2001-347, s. 1.3; 2005-276, s. 33.31.)

§ 105-164.42K. Registration and effect of registration.

Registration under the Agreement satisfies the registration requirements under this Article. A seller who registers under the Agreement within 12 months after the State becomes a member of the Agreement and who meets the following conditions is not subject to assessment for sales tax for any period before the effective date of the seller's registration:

(1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement.

(2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit.

(3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months. (2005-276, s. 33.17.)

§ 105-164.42L. Liability relief for erroneous information or insufficient notice by Department.

(a) The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases until 10 business days after the date of notification by the Secretary.

(b) The Secretary may develop a taxability matrix that provides information on the taxability of certain items or certain tax administration practices. A person who relies on the information provided in the taxability matrix is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix until 10 business days after the date of notification by the Secretary.

(c) A retailer is not liable for an underpayment of tax attributable to a rate change when the State fails to provide for at least 30 days between the enactment of the rate change and the effective date of the rate change if the conditions of this subsection are satisfied. However, if the State establishes the retailer fraudulently failed to collect tax at the new rate or solicited customers based on the immediately preceding effective rate, this liability relief does not apply. Both of the following conditions must be satisfied for liability relief:

(1) The retailer collected tax at the immediately preceding rate.

(2) The retailer's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate or the effective date applicable under G.S. 105-164.15A. (2005-276, s. 33.18; 2007-244, s. 5; 2013-414, s. 15; 2016-5, s. 3.17(a).)

Part 8. Administration and Enforcement.

§ 105-164.43: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-164.43A. (Recodified effective August 8, 2001 – See note) Certification of tax collector software and tax collector.

(a) Recodified as § 105-164.42H(a) by Session Laws 2001-347, s. 1.1, effective August 8,2001. See note.

(b) Recodified as § 105-164.42I(a) by Session Laws 2001-347, s. 1.1, effective August 8, 2001. See note. (2000-120, s. 2; 2001-347, s. 1.1.)

§ 105-164.43B. (Recodified effective August 8, 2001 – See note) Contract with Certified Sales Tax Collector.

Recodified as § 105-164.42I(b) by Session Laws 2001-347, s. 1.1, effective August 8, 2001. See note. (2000-120, s. 2; 2001-347, s. 1.1.)

§ 105-164.43C: Repealed by Session Laws 2001-347, s. 1.2, effective August 8, 2001. See note.

§ 105-164.43D. Applicable due date when due date falls on a weekend, holiday, or when the Federal Reserve Bank is closed.

(a) Weekends and Holidays. – When the last day for doing an act required or permitted by this Article or Subchapter VIII of this Chapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day.

(b) Federal Reserve Bank Closure. – If the Federal Reserve Bank is closed on a due date that prohibits a person from making a payment by ACH debit or credit as required by this Article or Subchapter VIII of this Chapter, the payment is timely if made on the next day the Federal Reserve Bank is open. (2014-3, s. 14.10.)

§ 105-164.44. Penalty and remedies of Article 9 applicable.

All provisions not inconsistent with this Article in Article 9, entitled "General Administration – Penalties and Remedies" of Subchapter I of Chapter 105 of the General Statutes, including but not limited to, administration, auditing, making returns, promulgation of rules and regulations by the Secretary, additional taxes, assessment procedure, imposition and collection of taxes and the lien thereof, assessments, refunds and penalties are hereby made a part of this Article and shall be applicable thereto. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

§ 105-164.44A: Repealed by Session Laws 1991, c. 45, s. 18.

§ 105-164.44B: Repealed by Session Laws 2011-145, s. 13.27(a), effective July 1, 2011.

§ 105-164.44C: Repealed by Session Laws 2001-424, s. 34.15(a)(1), as amended by Session Laws 2002-126, s. 30A.1, effective July 1, 2002.

§ 105-164.44D: Repealed by Session Laws 2015-241, s. 2.2(b), effective July 1, 2015.

§ 105-164.44E. (Repealed effective July 1, 2020) Transfer to the Dry-Cleaning Solvent Cleanup Fund.

(a) Transfer. – At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data.

(b) Sunset. – This section is repealed effective July 1, 2020. (2000-19, s. 1.1; 2009-483, ss. 6, 8.)

§ 105-164.44F. Distribution of part of telecommunications taxes to cities.

(a) Amount. – The Secretary must distribute part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the following percentages of the net proceeds of the taxes collected during the quarter:

(1) Eighteen and seventy one hundredths percent (18.70%) minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948), must be distributed to cities in accordance with this section. The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction."

(2) Seven and seven tenths percent (7.7%) must be distributed to counties and cities as provided in G.S. 105-164.44I.

(b) Share of Cities Incorporated on or After January 1, 2001. – The share of a city incorporated on or after January 1, 2001, is its per capita share of the amount to be distributed to all cities incorporated on or after this date. This amount is the proportion of the total to be distributed under this section that is the same as the proportion of the population of cities incorporated on or after January 1, 2001, compared to the population of all cities. In making the distribution under this subsection, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer.

(c) Share of Cities Incorporated Before January 1, 2001. – The share of a city incorporated before January 1, 2001, is its proportionate share of the amount to be distributed to all cities incorporated before this date. A city's proportionate share for a quarter is based on the amount of telephone gross receipts franchise taxes attributed to the city under G.S. 105-116.1 for the same quarter that was the last quarter in which taxes were imposed on telephone companies under repealed G.S. 105-120. The amount to be distributed to all cities incorporated before January 1, 2001, is the amount determined under subsection (a) of this section, minus the amount distributed under subsection (b) of this section.

The following changes apply when a city incorporated before January 1, 2001, alters its corporate structure. When a change described in subdivision (2) or (3) occurs, the resulting cities are considered to be cities incorporated before January 1, 2001, and the distribution method set out in this subsection rather than the method set out in subsection (b) of this section applies:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining cities incorporated before January 1, 2001, must be recalculated to adjust for the dissolution of that city.
(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.
(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(d) Share of Cities Served by a Telephone Membership Corporation. – The share of a city served by a telephone membership corporation, as described in Chapter 117 of the General Statutes, is computed as if the city was incorporated on or after January 1, 2001, under subsection (b) of this section. If a city is served by a telephone membership corporation and another provider, then its per capita share under this subsection applies only to the population of the area served by the telephone membership corporation.

(e) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:
(1) It is eligible to receive funds under G.S. 136-41.2.
(2) A majority of the mileage of its streets is open to the public.

(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (2001-424, s. 34.25(b); 2001-430, s. 10; 2001-487, s. 67(d); 2002-120, s. 4; 2004-203, s. 5(g); 2005-276, s. 33.19; 2005-435, s. 34(c); 2006-33, s. 8; 2006-66, ss. 24.1(d), (e), (f), (g); 2006-151, s. 7; 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b); 2009-451, s. 27A.2(c).)

§ 105-164.44G: Repealed by Session Laws 2013-316, s. 3.1(b), effective January 1, 2014, and applicable to sales made on or after that date.

§ 105-164.44H. Transfer to State Public School Fund.

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the State Public School Fund, one-fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year. (2005-276, s. 7.51(b).)

§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. From this amount, the

Secretary must first make the distribution required by subsection (b) of this section and then distribute the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty three and six tenths percent (23.6%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven and one tenths percent (37.1%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Channel Support. – G.S. 105-164.44J sets out the requirements for receipt by a county or city of supplemental PEG channel support funds distributed under this subsection. The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of the share of each qualifying PEG channel certified by the city or county under G.S. 105-164.44J. The share of each certified PEG channel is the sum of four million dollars ($4,000,000) and the amount of any funds returned to the Secretary in the prior fiscal year under G.S. 105-164.44J(d) divided by the number of PEG channels certified under G.S. 105-164.44J. A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

For purposes of this subsection, the term "qualifying PEG channel" has the same meaning as in G.S. 105-164.44J.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by March 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(c1) Revised Certification. – If a county or city determines that the amount of cable franchise tax it imposed during the first six months of the 2006-2007 fiscal year differs from the amount certified to the Secretary under subsection (c) of this section, the county or city may submit a new certification to the Secretary revising the amount. For distributions for quarters beginning on or after October 1, 2007, the Secretary must determine the proportionate share of a county or city based upon certifications submitted on or before October 1, 2007. For distributions for quarters beginning on or after April 1, 2008, the Secretary must determine the proportionate share of a county or city based upon certifications submitted on or before April 1, 2008. Certifications submitted after April 1,

2008, may not be used to adjust a county's or city's base amount under subsection (c) of this section.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it each fiscal year under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support in fiscal year 2006-2007 is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The amount of funds that must be used for PEG channel operation and support in subsequent fiscal years is the same proportionate amount of the funds that were distributed under subsections (c) and (d) of this section and used for this purpose in fiscal year 2006-2007.

A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county

in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (2006-151, s. 8; 2006-66, ss. 24.1(h), (i); 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b); 2007-527, s. 28; 2008-148, ss. 1, 2; 2009-451, s. 27A.2(d); 2010-158, s. 11(b); 2013-414, s. 45.)

§ 105-164.44J. Supplemental PEG channel support.

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

(1) Existing agreement. – Defined in G.S. 66-350.

(2) PEG channel. – Defined in G.S. 66-350.

(3) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(4) Qualifying PEG channel. – A PEG channel that operates for at least 90 days during a fiscal year and that meets all of the following programming requirements:

a. It delivers at least eight hours of scheduled programming a day.

b. It delivers at least six hours and 45 minutes of scheduled, non-character-generated programming a day.

c. Its programming content does not repeat more than fifteen percent (15%) of the programming content on any other PEG channel provided to the same county or city.

(5) Supplemental PEG channel support funds. – The amount distributed to a county or city under G.S. 105-164.44I(b).

(b) Certification. – A county or city must certify to the Secretary by July 15 of each year all of the qualifying PEG channels provided for its use during the preceding fiscal year by a cable service provider under either G.S. 66-357 or an existing agreement. A county or city may not certify more than three qualifying PEG channels. The certification must include all of the following:

(1) An identification of each channel as a public, an education, or a government channel.

(2) The name and signature of the PEG channel operator for each channel. If a qualifying PEG channel has more than one PEG channel operator, the county or city must include the name of each operator of the PEG channel. A PEG channel operator may be included on the certification of only one county or city for each type of PEG channel that it operates.

(3) Any other information required by the Secretary.

(c) Use of Funds. – A county or city must use the supplemental PEG channel support funds distributed to it for the operation and support of each of the qualifying PEG channels it certifies by allocating the amount it receives equally among each of the qualifying PEG channels. A county or city must distribute the supplemental PEG channel support funds to the PEG channel operator of the qualifying PEG channel within 30 days of its receipt of the supplemental PEG channel support funds from the Department, or as specified in an interlocal agreement. If a qualifying PEG channel has more than one PEG channel operator, the county or city must distribute the amount allocated for that PEG channel equally to each PEG channel operator, or as specified in an interlocal agreement.

(d) Errors in Certification. – If a county or city determines that it certified a PEG channel in error, the county or city must submit a revised certification to the Secretary, and the county or city must return all supplemental PEG channel support funds distributed to it as a result of the error. The Secretary must add the funds returned to the total amount of supplemental PEG channel support funds to be allocated in the following fiscal year. (2008-148, s. 3; 2010-158, s. 11(c).)

§ 105-164.44K. Distribution of part of tax on electricity to cities.

(a) Distribution. – The Secretary must distribute to cities forty-four percent (44%) of the net proceeds of the tax collected under G.S. 105-164.4 on electricity, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its franchise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. If the net proceeds of the tax allocated under this section are not sufficient to distribute the franchise tax share of each city under subsection (b) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(b) Franchise Tax Share. – The quarterly franchise tax share of a city is the total amount of electricity gross receipts franchise tax distributed to the city under repealed G.S. 105-116.1 or repealed provisions of G.S. 159B-27 for the same related quarter that was the last quarter in which taxes were imposed on electric power companies under repealed G.S. 105-116 or repealed provisions of G.S. 159B-27. The quarterly franchise tax share of a city includes adjustments made for the hold-harmless amounts under repealed G.S. 105-116. If the franchise tax share of a city, including the hold-harmless adjustments, is less than zero, then the amount is zero. The determination made by the Department with respect to a city's franchise tax share is final and is not subject to administrative or judicial review.

The franchise tax share of a city that has dissolved, merged with another city, or divided into two or more cities since it received a distribution under repealed G.S. 105-116.1 or repealed provisions of G.S. 159B-27 is adjusted as follows:

(1) If a city dissolves and is no longer incorporated, the franchise tax share of the city is added to the amount distributed under subsection (c) of this section.

(2) If two or more cities merge or otherwise consolidate, their franchise tax shares are combined.

(3) If a city divides into two or more cities, the franchise tax share of the city that divides is allocated among the new cities in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the city.

(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's franchise tax share under subsection (b) of this section. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this subsection based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city does not include ad valorem taxes levied on behalf of a taxing district and collected by the city.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. The Governor may not reduce or withhold the distribution. (2013-316, s. 4.3(a); 2013-363, s. 11.2.)

§ 105-164.44L. Distribution of part of tax on piped natural gas to cities.

(a) **(Effective for quarters beginning before July 1, 2015)** Distribution. – The Secretary must distribute to cities twenty percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped natural gas, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its excise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. If the net proceeds of the tax allocated under this section are not sufficient to distribute the excise tax share of each city under subsection (b) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(a) **(Effective for quarters beginning on or after July 1, 2015)** Distribution. – The Secretary must distribute to cities twenty percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped natural gas, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its excise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. A gas city will also receive an amount calculated under subsection (b1) of this section as part of its excise tax share. If the net proceeds of the tax allocated under this section are not sufficient to distribute the excise tax share of each city under subsection (b) of this section and the gas city share under subsection (b1) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(b) Excise Tax Share. – The quarterly excise tax share of a city is the amount of piped natural gas excise tax distributed to the city under repealed G.S. 105-187.44 for the

same related quarter that was the last quarter in which taxes were imposed on piped natural gas under repealed Article 5E of this Chapter. The determination made by the Department with respect to a city's excise tax share is final and is not subject to administrative or judicial review.

The excise tax share of a city that has dissolved, merged with another city, or divided into two or more cities since it received a distribution under repealed G.S. 105-187.44 is adjusted as follows:

(1) If a city dissolves and is no longer incorporated, the excise tax share of the city is added to the amount distributed under subsection (c) of this section.

(2) If two or more cities merge or otherwise consolidate, their excise tax shares are combined.

(3) If a city divides into two or more cities, the excise tax share of the city that divides is allocated among the new cities in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the city.

(b1) **(Effective for quarters beginning on or after July 1, 2015)** Gas Cities. – In addition to the excise tax share calculated under subsection (b) of this section, a gas city shall receive as part of its excise tax share a distribution calculated under this subsection. The Secretary must determine the amount the gas city would have received under repealed G.S. 105-187.44 for the last year in which taxes were imposed under repealed Article 5E of this Chapter if piped natural gas consumed by the city or delivered by the city to a customer had not been exempt from tax under repealed G.S. 105-187.41(c)(1) and G.S. 105-187.41(c)(2), excluding any amount received under subsection (b) of this section, and divide that amount by four to calculate the quarterly distribution amount for a gas city under this subsection. A gas city must report the information required by the Secretary to make the distribution under this section in the form, manner, and time required by the Secretary. The determination made by the Department with respect to a gas city's share under this subsection is final and is not subject to administrative or judicial review. For purposes of this section, the term "gas city" is a city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's excise tax share under subsection (b) of this section. Only cities that receive an excise tax share under subsection (b) of this section for any quarter of the year are eligible to receive an ad valorem share. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this section based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city does not include ad valorem taxes levied on behalf of a taxing district and collected by the city.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. The Governor may not reduce or withhold the distribution. (2013-316, s. 4.3(a); 2014-3, s. 14.13(e); 2014-39, ss. 1(b)-(d).)

§ 105-164.44M. Transfer to Division of Aviation.

The net proceeds of the tax collected on aviation gasoline and jet fuel under G.S. 105-164.4 must be transferred within 75 days after the end of each fiscal year to the Highway Fund. This amount is annually appropriated from the Highway Fund to the Division of Aviation of the Department of Transportation for prioritized capital improvements to general aviation airports for time-sensitive aviation capital improvement projects for economic development purposes. (2015-259, s. 4.1(d); 2017-57, s. 34.21(a).)

DIVISION IX. LOCAL OPTION SALES AND USE TAXES.

§§ 105-164.45 through 105-164.58: Repealed by Session Laws 1971, c. 77, s. 1.

§§ 105-165 through 105-176. Repealed by Session Laws 1957, c. 1340, s. 5.

§§ 105-177 through 105-178. Repealed by Session Laws 1951, c. 643, s.5.

§ 105-179. Repealed by Session Laws 1957, c. 1340, s. 5.

§ 105-180. Repealed by Session Laws 1951, c. 643, s. 5.

§ 105-181. Repealed by Session Laws 1957, c. 1340, s. 5.

§ 105-182. Repealed by Session Laws 1955, c. 1350, s. 19.

§§ 105-183 through 105-187: Repealed by Session Laws 1957, c. 1340, s. 5.

Article 5A.

North Carolina Highway Use Tax.

§ 105-187.1. Definitions.

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

(1) Commissioner. – The Commissioner of Motor Vehicles.

(2) Division. – The Division of Motor Vehicles, Department of Transportation.

(3) Long-term lease or rental. – A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.

(3a) Park model RV. – A vehicle that meets all of the following conditions:

a. Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use.

b. Is certified by the manufacturer as complying with ANSI A119.5.

c. Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.

(4) Recreational vehicle. – Defined in G.S. 20-4.01. The term also includes a park model RV.

(5) Rescue squad. – An organization that provides rescue services, emergency medical services, or both.

(6) Retailer. – A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles.

(7) Short-term lease or rental. – A lease or rental that is not a long-term lease or rental. (1989, c. 692, s. 4.1; 1991, c. 79, s. 4; 2000-173, s. 10(a); 2001-424, s. 34.24(e); 2001-497, s. 2(b); 2002-72, s. 19(a); 2016-5, s. 3.19(a).)

§ 105-187.2. Highway use tax imposed.

A tax is imposed on the privilege of using the highways of this State. This tax is in addition to all other taxes and fees imposed. (1989, c. 692, s. 4.1.)

§ 105-187.3. Rate of tax.

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

(a1) Tax Rate. – The tax rate is three percent (3%). The maximum tax is two thousand dollars ($2,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01, and for each certificate of title issued for a recreational vehicle. The tax is payable as provided in G.S. 105-187.4.

(b) Retail Value. – The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle.

The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction.

The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner.

The retail value of a vehicle for which a certificate of title is issued because of a transfer by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad.

(c) Schedules. – In adopting a schedule of values for motor vehicles, the Commissioner shall adopt a schedule whose values do not exceed the wholesale values of motor vehicles as published in a recognized automotive reference manual. (1989, c. 692, ss. 4.1, 4.2; c. 770, s. 74.13; 1993, c. 467, s. 3; 1995, c. 349, s. 1; c. 390, s. 30; 2001-424, s. 34.24(a); 2001-497, s. 2(a); 2009-550, s. 2(e); 2010-95, s. 5; 2013-360, s. 34.29(a); 2013-363, s. 8.1; 2014-3, s. 6.1(g); 2014-39, s. 3; 2015-241, s. 29.34A(a); 2015-259, s. 5(d); 2015-268, s. 10.1(d).)

§ 105-187.4. Payment of tax.

(a) Method. The tax imposed by this Article must be paid to the Commissioner when applying for a certificate of title for a motor vehicle. The Commissioner may not issue a certificate of title for a vehicle until the tax imposed by this Article has been paid. The tax may be paid in cash or by check.

(b) Sale by Retailer. When a certificate of title for a motor vehicle is issued because of a sale of the motor vehicle by a retailer, the applicant for the certificate of title must attach a copy of the bill of sale for the motor vehicle to the application. A retailer who sells a motor vehicle may collect from the purchaser of the vehicle the tax payable upon the issuance of a certificate of title for the vehicle, apply for a certificate of title on behalf of the purchaser, and remit the tax due on behalf of the purchaser. If a check submitted by a retailer in payment of taxes collected under this section is not honored by the financial institution upon which it is drawn because the retailer's account did not have sufficient funds to pay the check or the retailer did not have an account at the institution, the Division may suspend or revoke the license issued to the retailer under Article 12 of Chapter 20 of the General Statutes. (1989, c. 692, s. 4.1; 1991, c. 193, s. 1.)

§ 105-187.5. Alternate tax for those who rent or lease motor vehicles.

(a) Election. – A retailer may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. The portion of a lease or rental billing or payment that represents any amount applicable to the sales price of a service contract as defined in G.S. 105-164.3 should not be included in the gross receipts subject to the tax imposed by this Article. The charge must be separately stated on documentation given to the purchaser at the time the lease or rental agreement goes into effect, or on the monthly billing statement or other documentation given to the purchaser. When a lease or rental contract is sold to another retailer, the seller of the lease or rental contract should provide to the purchaser of the lease or rental contract the documentation showing that the service contract and applicable sales taxes were separately stated at the time the lease or

rental went into effect and the new retailer must retain the information to support an allocation for tax computed on the gross receipts subject to highway use tax. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle.

(b) Rate. – The tax rate on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the lease or rental price. The maximum tax in G.S. 105-187.3(a1) on certain motor vehicles applies to a continuous lease or rental of such a motor vehicle to the same person.

(c) Method. – A retailer who elects to pay tax on the gross receipts of the lease or rental of a motor vehicle shall make this election when applying for a certificate of title for the vehicle. To make the election, the retailer shall complete a form provided by the Division giving information needed to collect the alternate tax based on gross receipts. Once made, an election is irrevocable.

(d) Administration. – The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. In addition, the Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer. (1989, c. 692, s. 4.1; 1991, c. 79, s. 5; c. 193, s. 3; 1995, c. 410, s. 1; 2000-173, s. 10(b); 2001-424, s. 34.24(b); 2001-497, s. 2(c); 2014-3, s. 6.1(h); 2015-259, s. 5(e); 2016-92, s. 2.7; 2016-94, s. 38.5(k).)

§ 105-187.6. Exemptions from highway use tax.

(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To (i) the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle or (ii) a used motor vehicle dealer under G.S. 20-109.1 because the vehicle is a salvage vehicle that was abandoned.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.

(3a) To one or more of the same co-owners to reflect the removal of one or more other co-owners, when there is no consideration for the transfer.

(4) By will or intestacy.

(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.

(6) By a distribution of marital or divisible property incident to a marital separation or divorce.

(7) Repealed by Session Laws 2009-445, s. 16, effective August 7, 2009.

(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:

a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.

b. By a local board of education.

(9) To a volunteer fire department or volunteer rescue squad that is not part of a unit of local government, has no more than two paid employees, and is exempt from State income tax under G.S. 105-130.11, when the motor vehicle is one of the following:

a. A fire truck, a pump truck, a tanker truck, or a ladder truck used to suppress fire.

b. A four-wheel drive vehicle intended to be mounted with a water tank and hose and used for forest fire fighting.

c. An emergency services vehicle.

(10) To a State agency from a unit of local government, volunteer fire department, or volunteer rescue squad to enable the State agency to transfer the vehicle to another unit of local government, volunteer fire department, or volunteer rescue squad.

(11) To a revocable trust from an owner who is the sole beneficiary of the trust.

(12) To a charitable organization operating under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) where the vehicle was donated to the charitable organization solely for purposes of resale by the charitable organization.

(b) Partial Exemptions. – A maximum tax of forty dollars ($40.00) applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To a secured party who has a perfected security interest in the motor vehicle.

(2) To a partnership, limited liability company, corporation, trust, or other person where no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Code, or because the transfer is treated under the Code as being to an entity that is not a separate entity from its owner or whose separate existence is otherwise disregarded, or to a partnership, limited liability company, or corporation by merger, conversion, or consolidation in accordance with applicable law.

(c) Out-of-state Vehicles. – A maximum tax of two hundred fifty dollars ($250.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in the name of the owner of the motor vehicle in another state for at least 90 days prior to the date of application for a certificate of title in this State.

(d) Exemption Limitation. – The full exemptions set out in subsection (a) of this section, except for those set out in subdivisions (1), (2), (9), and (10) of subsection (a) of this section, do not apply to a certificate of title issued for a motor vehicle titled in another

state at the time of the transfer. The partial exemptions set out in subsection (b) of this section do not apply to a certificate of title issued for a motor vehicle titled in another state at the time of the transfer. (1989, c. 692, s. 4.1; c. 770, ss. 74.9, 74.10; 1991, c. 193, s. 4; c. 689, s. 323; 1993, c. 467, s. 1; 1995, c. 390, s. 31; 1997-443, s. 11A.118(a); 1998-98, s. 15.1; 1999-369, s. 5.9; 2000-140, s. 68; 2001-387, s. 151; 2001-424, s. 34.24(d); 2001-487, s. 68; 2009-81, s. 2; 2009-445, s. 16; 2010-95, s. 6; 2013-400, s. 6; 2015-241, ss. 29.34(a), 29.34A(b); 2015-268, s. 10.1(d); 2017-69, s. 1; 2018-43, s. 5.)

§ 105-187.7. Credits.

(a) Tax Paid in Another State. – A person who, within 90 days before applying for a certificate of title for a motor vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a taxing jurisdiction outside this State is allowed a credit against the tax due under this Article for the amount of tax paid to the other jurisdiction.

(b) Tax Paid Within One Year. – A person who applies for a certificate of title for a motor vehicle that is titled in another state but was formerly titled in this State is allowed a credit against the tax due under this Article for the amount of tax paid under this Article by that person on the same vehicle within one year before the application for a certificate of title. (1989, c. 692, s. 4.1; 1995, c. 390, s. 32; c. 512, s. 1.)

§ 105-187.8. Refund for return of purchased motor vehicle.

When a purchaser of a motor vehicle returns the motor vehicle to the seller of the motor vehicle within 90 days after the purchase and receives a vehicle replacement for the returned vehicle or a refund of the price paid the seller, whether from the seller or the manufacturer of the vehicle, the purchaser may obtain a refund of the privilege tax paid on the certificate of title issued for the returned motor vehicle.

To obtain a refund, the purchaser must apply to the Division for a refund within 30 days after receiving the replacement vehicle or refund of the purchase price. The application must be made on a form prescribed by the Commission and must be supported by documentation from the seller of the returned vehicle. (1989, c. 692, s. 4.1; 1995, c. 390, s. 33.)

§ 105-187.9. Disposition of tax proceeds.

(a) Distribution. – Of the taxes collected under this Article at the rate of eight percent (8%), the sum of ten million dollars ($10,000,000) shall be credited annually to the Highway Fund, and the remainder shall be credited to the General Fund. Taxes collected under this Article at the rate of three percent (3%) shall be credited to the North Carolina Highway Trust Fund.

(b) Repealed by Session Laws 2010-31, s. 28.7(i), and Session Laws 2013-183, s. 4.1, effective July 1, 2013.

(c) Repealed by Session Laws 2013-183, s. 4.1, effective July 1, 2013. (1989, c. 692, s. 4.1; c. 799, s. 33; 1993, c. 321, s. 164(a); 2001-424, s. 34.24(c); 2001-513, s. 15;

2008-107, s. 25.5(a), (c), (e); 2010-31, s. 28.7(f), (h)-(j); 2011-145, ss. 28.33(c), (d); 2011-391, s. 57; 2012-142, s. 24.8(b); 2013-183, s. 4.1; 2017-57, s. 2.2(f).)

§ 105-187.10. Penalties and remedies.

(a) Penalties. – The penalty for bad checks in G.S. 105-236(1) applies to a check offered in payment of the tax imposed by this Article. In addition, if a check offered to the Division in payment of the tax imposed by this Article is returned unpaid and the tax for which the check was offered, plus the penalty imposed under G.S. 105-236(1), is not paid within 30 days after the Commissioner demands its payment, the Commissioner may revoke the registration plate of the vehicle for which a certificate of title was issued when the check was offered.

(b) Unpaid Taxes. – The remedies for collection of taxes in Article 9 of this Chapter apply to the taxes levied by this Article and collected by the Commissioner. In applying these remedies, the Commissioner has the same authority as the Secretary.

(c) Appeals. – A taxpayer who disagrees with the presumed value of a motor vehicle must pay the tax based on the presumed value, but may appeal the value to the Commissioner. A taxpayer who appeals the value must provide two estimates of the value of the vehicle to the Commissioner. If the Commissioner finds that the value of the vehicle is less than the presumed value of the vehicle, the Commissioner shall refund any overpayment of tax made by the taxpayer with interest at the rate specified in G.S. 105-241.21 from the date of the overpayment. (1989, c. 692, s. 4.1; c. 770, s. 74.8; 2007-491, ss. 21, 44(1)b.)

§ 105-187.11: Repealed by Session Laws 2007-527, s. 30, effective August 31, 2007.

§§ 105-187.12 through 105-187.14. Reserved for future codification purposes.

Article 5B.

Scrap Tire Disposal Tax.

§ 105-187.15. Definitions.

The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not include lease or rental, and the following definitions apply to this Article:

(1) Scrap tire. – A tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.

(2) Tire. – A continuous solid or pneumatic rubber covering encircling a wheel. (1991, c. 221, s. 1.)

§ 105-187.16. Tax imposed.

(a) Levy. A privilege tax is imposed on a tire retailer at a percentage rate of the sales price of each new tire sold at retail by the retailer. A privilege tax is imposed on a tire retailer and on a tire wholesale merchant at a percentage rate of the sales price of each new tire sold by the retailer or wholesale merchant to a wholesale merchant or retailer for placement on a vehicle offered for

sale, lease, or rental by the retailer or wholesale merchant. An excise tax is imposed on a new tire purchased for storage, use, or consumption in this State or for placement in this State on a vehicle offered for sale, lease, or rental. This excise tax is a percentage rate of the purchase price of the tire. These taxes are in addition to all other taxes.

(b) Rate. The percentage rate of the taxes imposed by subsection (a) of this section is set by the following table; the rate is based on the bead diameter of the new tire sold or purchased:

Bead Diameter of Tire	Percentage Rate
Less than 20 inches	2%
At least 20 inches	1%.

(1991, c. 221, s. 1; 1993, c. 548, s. 1; 1997-209, s. 1; 2001-414, s. 22; 2002-10, s. 1.)

§ 105-187.17. Administration.

The privilege tax this Article imposes on a tire retailer who sells new tires at retail is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new tire in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new tire is sold is a credit against the additional State use tax imposed on the storage, use, or consumption of the same tire.

The privilege tax this Article imposes on a tire retailer and on a tire wholesale merchant who sell new tires for placement in this State on a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the tires. This tax and the excise tax this Article imposes on a new tire purchased for placement in this State on a vehicle offered for sale, lease, or rental shall, to the extent practical, be collected and administered as if they were additional State sales and use taxes. The privilege tax paid when a new tire is sold for placement on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the purchase of the same tire for placement in this State on a vehicle offered for sale, lease, or rental. (1991, c. 221, s. 1.)

§ 105-187.18. Exemptions.

(a) The taxes imposed by this Article do not apply to:

(1) Bicycle tires and other tires for vehicles propelled by human power.

(2) Recapped tires.

(3) Tires sold for placement on newly manufactured vehicles.

(b) Except for the exemption for sales a state cannot constitutionally tax, the exemptions and refunds allowed in Article 5 of this Chapter do not apply to the taxes imposed by this Article. (1991, c. 221, s. 1; 1991 (Reg. Sess., 1992), c. 867, s. 1; 1993, c. 364, s. 2; 2003-416, s. 19(a); 2010-166, s. 3.4.)

§ 105-187.19. Use of tax proceeds.

(a) The Secretary shall distribute the taxes collected under this Article, less the allowance to the Department of Revenue for administrative expenses, in accordance with this section. The Secretary may retain the cost of collection by the Department, not to exceed four hundred twenty-five thousand dollars ($425,000) a year, as reimbursement to the Department.

(b) Each quarter, the Secretary shall credit thirty percent (30%) of the net tax proceeds to the General Fund. The Secretary shall distribute the remaining seventy percent (70%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer.

(c) A county may use funds distributed to it under this section only as provided in G.S. 130A-309.54. A county that receives funds under this section and that has an agreement with another unit of local government under which the other unit of local government provides for the disposal of solid waste for the county shall transfer the amount received under this section to the other unit of local government. A unit of local government to which funds are transferred is subject to the same restrictions on use of the funds as the county. (1991, c. 221, s. 1; 1993, c. 485, s. 13; c. 548, ss. 2, 8; 1997-209, ss. 1, 3; 2004-203, s. 5(h); 2007-153, s. 1; 2007-323, s. 24.2; 2009-451, s. 13.3B(a); 2013-360, s. 14.16(a).)

Article 5C.

White Goods Disposal Tax.

§ 105-187.20. Definitions.

The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not include lease or rental, and the following definition applies to this Article:

(1) Repealed by Session Laws 2005-435, s. 35, effective September 27, 2005.

(2) White goods. – Defined in G.S. 130A-290(a). (1993, c. 471, s. 3; 1998-24, s. 7; 2000-109, s. 9(a); 2005-435, s. 35.)

§ 105-187.21. Tax imposed.

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is three dollars ($3.00). These taxes are in addition to all other taxes. (1993, c. 471, s. 3; 1998-24, ss. 1, 7; 2000-109, s. 9(a); 2016-5, s. 3.20(a).)

§ 105-187.22. Administration.

The privilege tax this Article imposes on a white goods retailer is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new white good in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new white good is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same white good. (1993, c. 471, s. 3; 1998-24, s. 7; 2000-109, s. 9(a).)

§ 105-187.23. Exemptions and refunds.

(a) Exemptions. – Except for the exemption for sales a state cannot constitutionally tax, the exemptions allowed in Article 5 of this Chapter do not apply to the taxes imposed by this Article.

(b) Refunds. – The refunds allowed in Article 5 of this Chapter do not apply to the taxes imposed by this Article. A person who buys at least 50 new white goods of any kind in the same sale or purchase may obtain a refund equal to sixty percent (60%) of the amount of tax imposed by this Article on the white goods when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in this State and do not contain the kind of white goods purchased. To obtain a refund, a person must file an application for a refund with the Secretary. The application must contain the information required by the Secretary, be signed by the purchaser of the white goods, and be submitted by the date set by the Secretary. (1993, c. 471, s. 3; 1998-24, s. 7; 2000-109, s. 9(a); 2003-416, s. 19(b); 2010-166, s. 3.5.)

§ 105-187.24. Use of tax proceeds.

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed four hundred twenty-five thousand dollars ($425,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit twenty-eight percent (28%) of the net tax proceeds to the General Fund. The Secretary shall distribute the remaining seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environmental Quality under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county. (1993, c. 471, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b); 1998-24, ss. 2, 7; 2000-109, s. 9(a); 2004-203, s. 5(i); 2007-323, s. 24.1; 2013-360, s. 14.17(a); 2015-241, s. 14.30(u).)

§§ 105-187.25 through 105-187.29. Reserved for future codification purposes.

Article 5D.

Dry-Cleaning Solvent Tax.

(Repealed effective January 1, 2020)

§ 105-187.30. (See note for repeal of Article) Definitions.

The definitions in G.S. 105-164.3 apply to this Article, and the following definitions apply to this Article:

(1) Dry-cleaning facility. – Defined in G.S. 143-215.104B.

(2) Dry-cleaning solvent. – Defined in G.S. 143-215.104B. (1997-392, s. 4; 2009-483, s. 5.)

§ 105-187.31. Tax imposed.

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is ten dollars ($10.00) for each gallon of halogenated hydrocarbon-based dry-cleaning solvent and one dollar and thirty-five cents ($1.35) for each gallon of hydrocarbon-based dry-cleaning solvent. These taxes are in addition to all other taxes. (1997-392, s. 4; 2000-19, s. 1.2; 2001-265, s. 1; 2007-530, s. 13; 2009-483, ss. 5, 6; 2017-204, s. 2.9(g).)

§ 105-187.32. (See note for repeal of Article) Administration.

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent. (1997-392, s. 4; 2009-483, s. 5.)

§ 105-187.33. (See note for repeal of Article) Exemptions and refunds.

Except for the exemption for sales a state cannot constitutionally tax, the exemptions and refunds allowed in Article 5 of this Chapter do not apply to the taxes imposed by this Article. (1997-392, s. 4; 2003-416, s. 19(c); 2009-483, s. 5; 2010-166, s. 3.6.)

§ 105-187.34. (See note for repeal of Article) Use of tax proceeds.

The Secretary must credit the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning Solvent Cleanup Fund. The Secretary may retain the Department's cost of collection, not to exceed one hundred twenty-five thousand dollars ($125,000) a year, as reimbursement to the Department. (1997-392, s. 4; 2009-483, s. 5.)

§ 105-187.35. Sunset.

This Article is repealed effective January 1, 2020. (2009-483, s. 9.)

§ 105-187.36. Reserved for future codification purposes.

§ 105-187.37. Reserved for future codification purposes.

§ 105-187.38. Reserved for future codification purposes.

§ 105-187.39. Reserved for future codification purposes.

Article 5E.

Piped Natural Gas Tax.

§§ 105-187.40 through 105-187.46: Repealed by Session Laws 2013-316, s. 4.1(d), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

§ 105-187.47. Reserved for future codification purposes.

§ 105-187.48. Reserved for future codification purposes.

§ 105-187.49. Reserved for future codification purposes.

Article 5F.

Certain Machinery and Equipment.

§ 105-187.50. (Repealed effective July 1, 2018) Definitions.

The definitions in G.S. 105-164.3 apply in this Article. (2001-347, s. 2.17; 2007-323, s. 31.22(a); 2009-451, s. 27A.3(v); 2010-91, s. 5; 2017-57, s. 38.8(a).)

§ 105-187.51. (Repealed effective July 1, 2018) Tax imposed on mill machinery.

(a) Scope. – A privilege tax is imposed on the following persons:

(1) A manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State. A manufacturing industry or plant does not include the following:

a. A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.

b. A production company.

(2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant.

(3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

(b) Rate. – The tax is one percent (1%) of the purchase price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used

in this section, the term "accessories" does not include electricity. (2001-347, s. 2.17; 2005-435, s. 56(a); 2010-147, s. 2.3; 2016-94, s. 38.2(d); 2017-57, s. 38.8(a).)

§ 105-187.51A: Repealed by Session Laws 2007-397, s. 12(d) effective July 1, 2010.

§ 105-187.51B. (Repealed effective July 1, 2018) Tax imposed on machinery, equipment, and other tangible personal property purchased by certain companies.

(a) Tax. – A privilege tax is imposed on the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

b. Port and dock facilities.

c. Rail equipment.

d. Material handling equipment.

(2) A company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry 54171 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company at the establishment in the research and development of tangible personal property.

c. Would be considered mill machinery or mill machinery parts or accessories under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(3) A company primarily engaged at the establishment in software publishing activities included in industry group 5112 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company at the establishment in the research and development of tangible personal property.

c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(4) A company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company at the establishment in repairing or refurbishing tangible personal property.

c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used by the industry or plant to manufacture tangible personal property.

(5) A company located at a ports facility for waterborne commerce that purchases any of the following:

a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.

(6) A person other than a person subject to tax under subdivision (1) of this subsection that gathers and obtains ferrous metals, nonferrous metals, and items that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades that purchases equipment, or an attachment or repair part for the equipment, that meets all of the following requirements:

a. Is capitalized by the person for tax purposes under the Code.

b. Is used by the person in a conversion process described in this subdivision.

c. Is not a motor vehicle or an attachment or repair part for a motor vehicle.

(7) A company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase that purchases equipment, or an attachment or repair part for the equipment, that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company in the process described in this subdivision.

(8) A company (i) that is engaged in the fabrication of metal work, (ii) that has annual gross receipts, including the gross receipts of all related persons as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars ($8,000,000), and (iii) that purchases equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.

(b) Rate. – The tax is one percent (1%) of the purchase price of the equipment or other tangible personal property. The maximum tax is eighty dollars ($80.00) per article. (2005-276, s. 33.21; 2006-66, s. 24.9(a); 2006-196, s. 12; 2007-323, s. 31.7(a); 2007-527, s. 13(a); 2008-107, s. 28.21(a); 2011-302, s. 1; 2013-414, s. 46; 2016-94, s. 38.2(a), (b); 2016-123, ss. 11.1, 11.3(a); 2017-57, s. 38.8(a).)

§ 105-187.51C. (Expiring for sales occurring on or after July 1, 2015 and repealed effective July 1, 2018) Tax imposed on datacenter machinery and equipment.

(a) Tax. – A privilege tax is imposed on the owner of a datacenter that meets the requirements of subsection (a1) of this section and that purchases machinery or equipment to be located and used at the datacenter that is capitalized for tax purposes under the Code and is used either:

(1) For the provision of datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems.

(2) For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(a1) Requirements. – The Secretary of Commerce must certify that the datacenter meets all of the following requirements:

(1) The investment requirements of this subdivision. The level of investment required by this subdivision must consist of private funds that have been or will be made in real and tangible personal property for the facility within five years of the date on which the first property investment is made by the owner of the facility.

a. For facilities located in a development tier one area, at least one hundred fifty million dollars ($150,000,000).

b. For facilities located in a development tier two area or a development tier three area, at least two hundred twenty-five million dollars ($225,000,000).

(2) The wage standard requirements of G.S. 105-129.83.

(3) The health insurance requirements of G.S. 105-129.83.

(a2) Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases machinery or equipment to be located and used at that datacenter. As used in this subsection, the owner of a datacenter includes an entity that is owned by or under common control with the owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if the second datacenter meets the following requirements and the machinery or equipment that is purchased is capitalized for tax purposes under the Code and is used for one of the purposes listed in subsection (a) of this section:

(1) The Secretary of Commerce certifies that an investment of private funds of at least seventy-five million dollars ($75,000,000) has been or will be made in real and tangible personal property for the facility within five years after the facility subject to tax under subsection (a) of this section is placed into service and that the datacenter meets the requirements in subsection (a1) of this section, other than the minimum investment amount in that subsection.

(2) The two datacenters are linked through a fiber-optic connection or a similar connection.

(3) The datacenters are placed in service within five years of each other.

(a3) Contractor Option. – A contractor or subcontractor that is subject to this subsection may elect to pay tax on its purchases of machinery and equipment described in subsection (a) of this section at the rate set in this section instead of the rate set in Article 5 of this Chapter. To make this election, a contractor or subcontractor must register with the Secretary for payment of tax under this section. The following contractors and subcontractors are subject to this section:

(1) A contractor that purchases the machinery and equipment for use in the performance of a contract with the owner of a datacenter subject to tax under this section.

(2) A subcontractor that purchases the machinery and equipment for use in the performance of a contract with a general contractor that has a contract with the owner of a datacenter subject to tax under this section.

(b) Rate and Scope. – The tax is one percent (1%) of the sales price of the eligible equipment and machinery. The maximum tax is eighty dollars ($80.00) per article. The tax does not apply to equipment and machinery of an eligible Internet datacenter that is exempt from sales tax under G.S. 105-164.13(55).

(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2015. (2007-323, s. 31.22(b); 2009-445, s. 17; 2010-91, ss. 6, 7; 2011-330, ss. 22, 24; 2017-57, s. 38.8(a).)

§ 105-187.51D. (Repealed effective July 1, 2018) (Expiring for sales occurring on or after July 1, 2018) Tax imposed on machinery at large manufacturing and distribution facility.

(a) Definition. – For the purposes of this section, a "large manufacturing and distribution facility" is a facility that is to be used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least eighty million dollars ($80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

(b) Tax. – A privilege tax is imposed on a large manufacturing and distribution facility that purchases mill machinery, distribution machinery, or parts or accessories for mill machinery or distribution machinery for storage, use, or consumption in this State. The tax is one percent (1%) of the purchase price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used in this section, the term "accessories" does not include electricity.

(c) Forfeiture. – If the required level of investment or employment to qualify as [a] large manufacturing and distribution facility is not timely made, achieved, or maintained, then the rate provided under this section is forfeited. If the rate is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the rate provided under this section is forfeited on all purchases. If the rate is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the rate provided under this section is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level.

A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2018. (2011-302, s. 2; 2016-94, s. 38.2(e); 2017-57, s. 38.8(a).)

§ 105-187.52. (Repealed effective July 1, 2018) Administration.

(a) Administration. – The privilege taxes imposed by this Article are in lieu of the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another state or for the amount of sales and use tax paid to this State. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this Article. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under G.S. 105-164.13(61a)a. (2001-347, s. 2.17; 2005-276, s. 33.22; 2006-162, s. 11; 2007-527, s. 14; 2011-330, s. 25(b); 2013-414, s. 16; 2015-6, s. 2.23(b); 2017-57, s. 38.8(a); 2018-5, s. 38.5(r).)

§ 105-187.53. (Repealed effective July 1, 2018) Commercial logging items.

This Article does not apply to an item that is exempt from sales and use tax under G.S. 105-164.13(4f). (2006-19, s. 2; 2017-57, s. 38.8(a).)

§ 105-187.54. Reserved for future codification purposes.

§ 105-187.55. Reserved for future codification purposes.

§ 105-187.56. Reserved for future codification purposes.

§ 105-187.57. Reserved for future codification purposes.

§ 105-187.58. Reserved for future codification purposes.

§ 105-187.59. Reserved for future codification purposes.

Article 5G.

Solid Waste Disposal Tax.

§ 105-187.60. Definitions.

The definitions set out in G.S. 105-164.3 and G.S. 130A-290 apply to this Article. (2007-550, s. 14(a).)

§ 105-187.61. Tax imposed.

(a) Tax Rate. – An excise tax is imposed on the disposal of municipal solid waste and construction and demolition debris in any landfill permitted pursuant to Article 9 of Chapter 130A of the General Statutes at a rate of two dollars ($2.00) per ton of waste. An excise tax is imposed on the transfer of municipal solid waste and construction and demolition debris to a transfer station permitted pursuant to Article 9 of Chapter 130A of the General Statutes for disposal outside the State at a rate of two dollars ($2.00) per ton of waste.

(b) Tax Liability. – The excise tax imposed by this section is due on municipal solid waste and construction and demolition debris received from third parties and on municipal solid waste and construction and demolition debris disposed of by the owner or operator. The tax is payable by the owner or operator of each landfill and transfer station permitted under Article 9 of Chapter 130A of the General Statutes. (2007-550, s. 14(a).)

§ 105-187.62. Administration.

(a) Collection. – The owner or operator of each landfill and transfer station permitted pursuant to Article 9 of Chapter 130A of the General Statutes must maintain scales designed to determine waste tonnage that are approved by the Department of Agriculture and Consumer Services. Each owner or operator must record waste tonnage disposed of in a landfill or transferred to a station for disposal outside the State and must maintain other records as required by the Secretary of Revenue. An owner or operator may add the amount of the solid waste disposal tax due to the charges made to a third party for disposal of municipal solid waste or construction and demolition debris.

(b) Payment. – The tax imposed by this Article is payable when a return is due. A return and payment are due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Bad Debt Deduction. – In the event that an owner or operator pays the tax on tonnage received from a customer and the account of that customer is found to be worthless and charged off for income tax purposes, the owner or operator may recover the tax paid on the tonnage it received but for which it was never compensated. The tax shall be recovered by reducing the overall tonnage on which the owner or operator pays tax in a calendar quarter by the tonnage for which it was never compensated from the worthless account. A local government that has paid tax on an account that is subsequently found to be worthless shall recover the tax paid in the same manner, if it meets all the conditions for recovery that would apply if the local government were subject to income tax. If the owner or operator subsequently collects on an account that has been declared worthless, any tax recovered must be repaid in the next calendar quarter. (2007-550, s. 14(a); 2008-207, s. 1.)

§ 105-187.63. Use of tax proceeds.

From the taxes received pursuant to this Article, the Secretary may retain the costs of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department. The Secretary must credit or distribute taxes received pursuant to this Article, less the cost of collection, on a quarterly basis as follows:

(1) Fifty percent (50%) to the Inactive Hazardous Sites Cleanup Fund established by G.S. 130A-310.11.

(2) Thirty-seven and one-half percent (37.5%) to cities and counties in the State on a per capita basis, using the most recent annual estimate of population certified by the State Budget Officer. One-half of this amount must be distributed to cities, and one-half of this amount must be distributed to counties. For purposes of this distribution, the population of a county does not include the population of a city located in the county.

A city or county is excluded from the distribution under this subdivision if it does not provide solid waste management programs and services and is not responsible by contract for payment for these programs and services. The

Department of Environmental Quality must provide the Secretary with a list of the cities and counties that are excluded under this subdivision. The list must be provided by May 15 of each year and applies to distributions made in the fiscal year that begins on July 1 of that year.

Funds distributed under this subdivision must be used by a city or county solely for solid waste management programs and services.

(3) Twelve and one-half percent (12.5%) to the General Fund. (2007-543, s. 2; 2007-550, s. 14(a); 2008-207, s. 2; 2009-484, s. 4; 2013-360, s. 14.18(a); 2015-241, s. 14.30(u).)

§ 105-187.64: Reserved for future codification purposes.

§ 105-187.65: Reserved for future codification purposes.

§ 105-187.66: Reserved for future codification purposes.

§ 105-187.67: Reserved for future codification purposes.

§ 105-187.68: Reserved for future codification purposes.

§ 105-187.69: Reserved for future codification purposes.

Article 5H.

911 Service Charge for Prepaid Wireless Telecommunications Service.

§ 105-187.70. Department to comply with Part 10 of Article 15 of Chapter 143B of the General Statutes.

The Department of Revenue shall comply with the provisions of Part 10 of Article 15 of Chapter 143B of the General Statutes to receive and transfer to the 911 Fund the 911 service charge for prepaid wireless telecommunications service collected on retail transactions occurring in this State. (2011-122, s. 6; 2012-79, s. 1.6; 2015-241, s. 7A.3.)

§ 105-187.71: Reserved for future codification purposes.

§ 105-187.72: Reserved for future codification purposes.

§ 105-187.73: Reserved for future codification purposes.

§ 105-187.74: Reserved for future codification purposes.

§ 105-187.75: Reserved for future codification purposes.

Article 5I.

Severance Tax.

§ 105-187.76. Definitions.

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.
(2) Commission. – The Mining and Energy Commission.
(3) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.
(4) Energy mineral. – All forms of natural gas, oil, and related condensates.
(5) First purchaser. – A person who purchases an energy mineral from a producer.
(6) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as condensates.
(7) Gross price. – The total price paid by the first purchaser of the energy mineral at the wellhead.
(8) Marginal gas well. – A well incapable of producing more than 100 MCF per day, as determined by the Commission using the current wellhead deliverability rate methodology utilized by the Commission, during the calendar month for which the severance tax report is filed.
(9) MCF. – One thousand cubic feet of natural gas.
(10) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.
(11) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, State, or local governmental royalty interest.
(12) Person. – Defined in G.S. 105-228.90.
(13) Producer. – A person who takes an energy mineral from the soil or water in this State.
(14) Return. – Any report or statement required to be filed under this Article to determine the tax due.
(15) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.
(16) Secretary. – The Secretary of Revenue.
(17) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.
(18) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.
(19) Standard barrel of oil. – A barrel of oil containing 42 gallons.
(20) Taxpayer. – Any person required to pay the severance tax levied by this Article. (2014-4, s. 17(a).)

§ 105-187.77. Tax on severance of energy minerals.

(a) Purpose. – An excise tax is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The tax is imposed on the producer of the energy mineral. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold.

(b) Calculation of Tax. – The amount of the severance tax is calculated as follows:

(1) Condensates. – The applicable percentage rate of the gross price paid.

(2) Gas. – The applicable percentage rate of the market value as determined in G.S. 105-187.78.

(3) Oil. – The applicable percentage rate of the gross price paid.

(c) **(Effective until January 1, 2019)** Oil and Condensates Rate. – The percentage rate for condensates and oil is two percent (2%).

(c) **(Effective January 1, 2019 until January 1, 2021)** Oil and Condensates Rate. – The percentage rate for condensates and oil is three and one-half percent (3.5%).

(c) **(Effective January 1, 2021)** Oil and Condensates Rate. – The percentage rate for condensates and oil is five percent (5%).

(d) **(Effective until January 1, 2019)** Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent (0.4%).

(d) **(Effective January 1, 2019 until January 1, 2021)** Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is six-tenths of one percent (0.6%).

(d) **(Effective January 1, 2021)** Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is eight-tenths of one percent (0.8%).

(e) **(Effective until January 1, 2019)** Gas Rate. – The percentage rate for gas is nine-tenths of one percent (0.9%).

(e) **(Effective January 1, 2019 until January 1, 2021)** Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per MCF	0.9%
$3.01 per MCF	$4.00	1.9%
$4.01	N/A	2.9%

(e) **(Effective January 1, 2021 until January 1, 2023)** Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per MCF	0.9%
$3.01 per MCF	$4.00	1.9%
$4.01	$5.00	2.9%
$5.01	$6.00	3.9%
$6.01	$7.00	4.9%
$7.01	N/A	5%

(e) **(Effective January 1, 2023)** Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per MCF	0.9%
$3.01 per MCF	$4.00	1.9%
$4.01	$5.00	2.9%
$5.01	$6.00	3.9%
$6.01	$7.00	4.9%
$7.01	$8.00	5.9%
$8.01	$9.00	6.9%
$9.01	$10.00	7.9%
$10.01	N/A	9%

(2014-4, ss. 17(a), (d)-(f); 2016-5, s. 4.4(b).)

§ 105-187.78. Delivered to Market Value.

(a) Delivered to Market Value of Natural Gas. – The delivered to market value of natural gas is the total actual gross price as adjusted in this section. The delivered to market value of gas is determined by subtracting the producer's actual costs to deliver the gas to the market from the producer's total gross cash receipts from the sale of the natural gas. A producer receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market incurred.

(b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the market from the producer's gross receipts for purposes of calculating the delivered-to-market value of natural gas, the producer shall provide any information required by the Secretary. Every producer subtracting the costs to deliver the gas to the market as permitted under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the costs to deliver the gas to the market the producer is eligible to subtract. The burden of proving eligibility for subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to deliver the gas to the market shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

(c) Costs to Deliver the Gas to the Market and Facilities Used to Deliver the Gas to the Market. – A "facility used to deliver the gas to market" includes flow lines or gathering systems from the separator to the purchaser's transmission line, compressor stations, dehydration units, line heaters after the separator, and treating facilities. "Costs to deliver the gas to the market" are the actual and reasonable costs incurred by the producer to get the gas from the mouth of the well to the first purchaser, except costs incurred in normal lease separation of the oil or condensate from the gas, and costs associated with insurance premiums on a facility used to deliver the gas to market. Costs to deliver the gas to the market include only the following:

(1) Costs for compressing the gas sold.
(2) Costs for dehydrating the gas sold.
(3) Costs for sweetening and treating the gas sold.
(4) Costs for delivering the gas to the purchaser.
(5) Reasonable charges for depreciation of the facility used to deliver the gas to market being used, provided that, if the facility is rented, the actual rental fee is added.
(6) Costs of direct or allocated labor associated with the facility used to deliver the gas to market.
(7) Costs of materials, supplies, maintenance, repairs, and fuel associated with the facility used to deliver the gas to market.
(8) Property taxes paid on the facility used to deliver the gas to market.
(9) Charges for fees paid by the producer to any provider of dehydration, treating, compression, and delivery services. (2014-4, s. 17(a).)

§ 105-187.79. On-site use exemption from the tax.

On-site use is exempt from the tax imposed under this Article. On-site use is the severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's homestead and which have a yearly cumulative delivered to market value of not greater than one thousand two hundred dollars ($1,200). When severed energy minerals so used exceed a cumulative delivered to market value of one thousand two hundred dollars ($1,200) during any year, the further severance of energy minerals shall be subject to the tax imposed by this Article. (2014-4, s. 17(a).)

§ 105-187.80. Returns and payment of tax.

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 25th day of the second month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.
(2) The leases from which the energy minerals were produced.
(3) The names and addresses of the first purchasers of the energy minerals.

(g) Additional Information. – To claim an exemption for on-site use, the producer or taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of eligibility. The Secretary may require an applicant to provide any information required to administer this provision. The Secretary shall make the determination within 15 calendar days of the receipt of all information required by the Secretary from the producer or taxpayer, and the producer or taxpayer shall attach the determination of eligibility to its severance tax form next due, as applicable. The taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate records or to make them available for inspection. The portion of the severance tax that is required to be deducted from the royalty owner or other interest shall be calculated in the same manner as the portion of the severance tax borne by the producer.

(h) Commission Determination. – To claim the marginal gas rate, the producer or taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the Mining and Energy Commission has determined the well qualifies as a marginal gas well. (2014-4, s. 17(a).)

§ 105-187.81. Bond or letter of credit required.

A producer must file with the Secretary a bond or an irrevocable letter of credit after obtaining a permit under G.S. 113-395. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of producers and increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the producer and decrease the amount when the Secretary determines that a smaller bond amount will adequately protect the State from loss. When notified to do so by the Secretary, a person who is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary. (2014-4, s. 17(a); 2016-5, s. 4.4(c).)

§ 105-187.82: Repealed by Session Laws 2016-5, s. 4.4(a), effective May 11, 2016.

§ 105-187.83. Royalty owner's records.

The owner of a royalty interest shall keep and provide to the Secretary, upon request, both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted. (2014-4, s. 17(a).)

§ 105-187.84. Permits suspended for failure to report.

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environmental Quality of this failure. The Secretary of Environmental Quality shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environmental Quality shall immediately notify by mail an entity of a suspension under this section. (2014-4, s. 17(a); 2015-241, s. 14.30(v).)

§ 105-187.85. No local taxation.

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing,

marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter. (2014-4, s. 17(a).)

§ 105-187.86: Reserved for future codification purposes.

§ 105-187.87: Reserved for future codification purposes.

§ 105-187.88: Reserved for future codification purposes.

§ 105-187.89: Reserved for future codification purposes.

§ 105-187.90: Reserved for future codification purposes.

Article 6.

Gift Taxes.

§§ 105-188 through 105-197.1: Repealed by Session Laws 2008-107, s. 28.18(a), effective January 1, 2009.

§ 105-191: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 7.

§ 105-192. Repealed by Session Laws 1959, c. 1259, s. 9.

§§ 105-188 through 105-197.1: Repealed by Session Laws 2008-107, s. 28.18(a), effective January 1, 2009.

§ 105-196: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 7.

§§ 105-188 through 105-197.1: Repealed by Session Laws 2008-107, s. 28.18(a), effective January 1, 2009.

Article 7.

Schedule H. Intangible Personal Property.

§ 105-198: Repealed by Session Laws 1995, c. 41, s. 1(b).

§§ 105-199 through 105-200: Repealed by Session Laws 1985, c. 656, s. 32.

§§ 105-201 through 105-204: Repealed by Session Laws 1995, c. 41, s. 1(b).

§ 105-205. Repealed by Session Laws 1985, c. 656, s. 32.

§§ 105-206 through 105-207: Repealed by Session Laws 1995, c. 41, s. 1(b).

§ 105-208. Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-209: Repealed by Session Laws 1995, c. 41, s. 1(b).

§ 105-210: Repealed by Session Laws 1979, c. 179, s. 4.

§§ 105-211 through 105-212: Repealed by Session Laws 1995, c. 41, s. 1(b).

§ 105-213: Repealed by Session Laws 1995, c. 41, s. 1(b).

§ 105-213.1: Recodified as § 105-275.2 by Session Laws 1995.

§§ 105-214 through 105-217: Repealed by Session Laws 1995, c. 41, s. 1(b).

Article 8.

Schedule I. Compensating Use Tax.

§§ 105-218 through 105-228: Repealed by Session Laws 1957, c. 1340, s. 5.

Article 8A.

Gross Earnings Taxes on Freight Line Companies in Lieu of Ad Valorem Taxes.

§ 105-228.1. Defining taxes levied and assessed in this Article.

The purpose of this Article is to levy a fair and equal tax under authority of Section 2(2) of Article V of the North Carolina Constitution and to provide a practical means for ascertaining and collecting it. The taxes levied and assessed in this Article are on gross earnings, as defined in the Article, and are in lieu of ad valorem taxes upon the properties of persons taxed in this Article. (1954, c. 400, s. 8; 1998-98, ss. 64, 109.)

§ 105-228.2. Tax upon freight car line companies.

(a) For purposes of taxation under this section the property of freight line companies as defined is declared to constitute a special class of property. In lieu of all ad valorem taxes by either or both the State government and the respective local taxing jurisdictions, a tax upon gross earnings in the State as elsewhere defined shall be imposed.

(b) Any person or persons, joint-stock association or corporation, wherever organized or incorporated, engaged in the business of operating cars or engaged in the business of furnishing or leasing cars not otherwise listed for taxation in this State, for the transportation of freight (whether such cars be owned by such company or any other person or company), over any railway or lines, in whole or in part, within this State, such line or lines not being owned, leased or operated by such

company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, or refrigerator car or by some other name, shall be deemed a freight line company.

(c) For the purposes of taxation under this section all cars used exclusively within the State, or used partially within and without the State, and a proportionate part of the intangible values of the business as a going concern, are hereby declared to have situs in this State.

(d) Every freight line company, as hereinbefore defined, shall pay annually a sum in the nature of a tax at three per centum (3%) upon the total gross earnings received from all sources by such freight line companies within the State, which shall be in lieu of all ad valorem taxes in this State of any freight company so paying the same.

(e) The term "gross earnings received from all sources by such freight line companies within the State" as used in this Article is hereby declared and shall be construed to mean all earnings from the operation of freight cars within the State for all car movements or business beginning and ending within the State and a proportion, based upon the proportion of car mileage within the State to the total car mileage, or earnings on all interstate car movements or business passing through, or into or out of the State.

(f) Every railroad company using or leasing the cars of any freight line company shall, upon making payment to such freight line company for the use or lease, after June 30, 1943, of such cars withhold so much thereof as is designated in this section. On or before March first of each year such railroad company shall make and file with the Secretary of Revenue a statement showing the amount of such payment for the next preceding 12-month period ending December 31, and of the amounts so withheld by it, and shall remit to the Secretary of Revenue the amounts so withheld. If any railroad company shall fail to make such report or fail to remit the amount of tax herein levied, or shall fail to withhold the part of such payment hereby required to be withheld, such railroad company shall become liable for the amount of the tax herein levied and shall not be entitled to deduct from its gross earnings for purposes of taxation the amounts so paid by it to freight line companies.

It is not the purpose of this subsection to impose an unreasonable burden of accounting on railroad companies operating in this State, and the Secretary of Revenue is hereby authorized, upon the application of any railroad company, to approve any method of accounting which he finds to be reasonably adequate for determining the amount of mileage earnings by any car line company whose equipment is operated within the State by or on the lines of such railroad company. Further, if in the opinion of the Secretary of Revenue the tax imposed by this section can be satisfactorily collected direct from the freight line companies, he is hereby authorized to fix rules and regulations for such direct collection, with the authority to return at any time to the method of collection at source above provided in this subsection.

(g) Every car line company shall file such additional reports annually, and in such form and as of such date as the Secretary of Revenue may deem necessary to determine the equitable amount of tax levied under this section.

(h) Upon the filing of such reports it shall be the duty of the Secretary of Revenue to inspect and verify the same and assess the amount of taxes due from freight line companies therein named. Any freight line company against which a tax is assessed under the provisions of this Article may at any time within 15 days after the last day for the filing of reports by railroad companies, appear before the Secretary of Revenue at a hearing to be granted by the Secretary and offer evidence and argument on any matter bearing upon the validity or correctness of the tax assessed against it, and the Secretary shall review his assessment of such tax and shall make his order confirming or modifying the same as he shall deem just and equitable, and if any overpayment is found to have

been made it shall be refunded by the Secretary. Provided, however that such payment if in the amount of three dollars ($3.00) or more shall be refunded to the taxpayer within 60 days of the discovery thereof; if the amount of overpayment is less than three dollars ($3.00) then such overpayment shall be refunded only upon receipt by the Secretary of Revenue of a written demand for such refund from the taxpayer. Provided further, that no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the filing date of the return or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later.

(i) The provisions of Article 9 of this Chapter apply to this Article.

(j) The provisions of this Article shall apply to all freight line gross earnings accruing from and after June 30, 1943. (1943, c. 400, s. 8; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1998-212, s. 29A.14(j).)

Article 8B.

Taxes Upon Insurance Companies.

§ 105-228.3. Definitions.

The following definitions apply in this Article:

(1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of the General Statutes, regulating hospital, medical, and dental service corporations.

(1a) Captive insurance company. – Defined in G.S. 58-10-340.

(1b) Foreign captive insurance company. – A captive insurance company as defined in G.S. 58-10-340(9), except that such company is not formed or licensed under the laws of this State but is formed and licensed under the laws of any jurisdiction within the United States other than this State.

(2) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who have pooled their liabilities pursuant to G.S. 97-93 of the Workers' Compensation Act.

(3) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of the Workers' Compensation Act. (1945, c. 752, s. 2; 1985 (Reg. Sess., 1986), c. 928, s. 12; 1995, c. 360, s. 1(b); 2013-116, s. 6(a); 2018-5, s. 38.2(e).)

§ 105-228.4: Recodified as § 58-6-7 by Session Laws 1995, c. 360, s. 1(c).

§ 105-228.4A. Tax on captive insurance companies.

(a) Tax Levied. – A tax is levied in this section on a captive insurance company doing business in this State. In the case of a branch captive insurance company, the tax levied in this section applies only to the branch business of the company. Two or more captive insurance companies under common ownership and control are taxed under this section as a single captive insurance company. The tax levied in this section does not apply to a foreign captive insurance company.

(b) Other Taxes. – A captive insurance company that is subject to the tax levied by this section and a foreign captive insurance company are not subject to any of the following:

(1) Franchise taxes imposed by Article 3 of this Chapter.
(2) Income taxes imposed by Article 4 of this Chapter, subject to the provisions of G.S. 105-130.5A.
(3) Local privilege taxes or local taxes computed on the basis of gross premiums.
(4) The insurance regulatory charge imposed by G.S. 58-6-25.

(c) Administration. – The definitions in G.S. 58-10-340 apply in this section. A company subject to this section must file with the Secretary a full and accurate report of the premiums contracted for or collected on policies or contracts of insurance written by the company during the preceding calendar year. In the case of a multiyear policy or contract, the premiums must be prorated among the years covered by the policy or contract. The report is due on or before March 15. The taxes imposed by this section are due to the Secretary with the report.

(d) Tax on Assumed Reinsurance Premiums. – The tax to be applied to assumed reinsurance premiums is computed at the percentages provided in the table below. The tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis under subsection (e) of this section. The tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of one insurer by another insurer if the two insurers are under common control and the Commissioner of Insurance verifies both of the following: (i) the transaction between the insurers is part of a plan to discontinue the operations of one of the insurers, and (ii) the intent of the insurers is to renew or maintain business with the captive insurance company.

Premiums Collected	**Rate of Tax**
Up to $20,000,000	.225%
$20,000,000 to $40,000,000	.150%
$40,000,000 to $60,000,000	.050%
$60,000,000 and over	.025%

(e) Tax on Direct Premiums. – The tax to be applied to direct premiums is computed at the percentages provided in the table below. In determining the amount of premiums subject to tax under this subsection, the taxpayer may deduct the amounts paid to policyholders as return premiums. Return premiums include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

Premiums Collected	**Rate of Tax**
Up to $20,000,000	0.4%
$20,000,000 and more	0.3%

(f) Total Tax Liability. – The aggregate amount of tax payable under this section by a protected cell captive insurance company with more than 10 cells may not be less than ten thousand dollars ($10,000) and may not exceed the lesser of (i) one hundred thousand dollars ($100,000) plus five thousand dollars ($5,000) multiplied by the number of cells over 10 and (ii) two hundred thousand dollars ($200,000). The aggregate amount of tax payable under this section for any other captive insurance company may not be less than

five thousand dollars ($5,000) and may not exceed one hundred thousand dollars ($100,000).

If a captive insurance company is a special purpose financial captive and if the special purpose financial captive is under common ownership and control with one or more other captive insurance companies, the following provisions apply to the consolidated group of companies that are taxed as a single captive insurance company pursuant to subsection (a) of this section:

(1) The amount of premium tax payable under this section is allocated to each member of the consolidated group in the same proportion that the premium allocable to the member bears to the total premium of all members.

(2) The aggregate amount of tax payable under this section by the consolidated group is equal to the greater of the following:

a. The sum of the premium tax allocated to the members.

b. Five thousand dollars ($5,000).

(3) If the total premium tax allocated to all members of a consolidated group that are special purpose financial captives exceeds one hundred thousand dollars ($100,000), then the total premium tax allocated to those members is one hundred thousand dollars ($100,000).

(4) If the total premium tax allocated to all members of the consolidated group that are not special purpose financial captives exceeds one hundred thousand dollars ($100,000), then the total premium tax allocated to those members is one hundred thousand dollars ($100,000). (2013-116, s. 6(b); 2014-3, s. 14.11; 2018-5, s. 38.2(f).)

§ 105-228.5. Taxes measured by gross premiums.

(a) Tax Levied. – A tax is levied in this section on insurers, Article 65 corporations, health maintenance organizations, and self-insurers. An insurer, health maintenance organization, or Article 65 corporation that is subject to the tax levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. –

(1) Insurers. – The tax imposed by this section on an insurer or a health maintenance organization shall be measured by gross premiums from business done in this State during the preceding calendar year.

(2) Repealed by Session Laws 2006-196, effective for taxable years beginning on or after January 1, 2008.

(3) Article 65 Corporations. – The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year.

(4) Self-insurers. – The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the self-insurer's payroll for the previous calendar

year as determined under Article 36 of Chapter 58 of the General Statutes modified by the self-insurer's approved experience modifier.

(b1) Calculation of Tax Base. – In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

(1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.

(2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other health care plans and contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, means all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums, and the gross amount of excluded premiums is exempt from the tax imposed by this section:

(1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan

qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.

(2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.

(3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

(4) The following premiums, to the extent federal law prohibits their taxation under this Article:

a. Federal Employees Health Benefits Plan premiums.

b. Medicaid or Medicare premiums.

(d) **(See Editor's note)** Tax Rates; Disposition. –

(1) Workers' Compensation. – The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, on contracts applicable to liabilities under the Workers' Compensation Act is two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.

(2) Other Insurance Contracts. – The tax rate to be applied to gross premiums on all other taxable contracts issued by insurers or health maintenance organizations and to be applied to gross premiums and gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations is one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.

(3) Additional Rate on Property Coverage Contracts. – An additional tax at the rate of seventy-four hundredths percent (0.74%) applies to gross premiums on insurance contracts for property coverage. The tax is imposed on ten percent (10%) of the gross premiums from insurance contracts for automobile physical damage coverage and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty percent (20%) of the net proceeds of this additional tax must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty percent (20%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. Up to twenty percent (20%), as determined in accordance with G.S. 58-87-10(f), must be credited to the Workers' Compensation Fund. The remaining net proceeds must be credited to the General Fund. The additional tax imposed on property coverage contracts under this subdivision is a special purpose assessment based on gross premiums and not a gross premiums tax.

The following definitions apply in this subdivision:

a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.

b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, nonliability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery. The term also includes insurance contracts for wind damage.

c. NAIC. – National Association of Insurance Commissioners.

(4) Repealed by Session Laws 2006-196, effective for taxable years beginning on or after January 1, 2008.

(5) Repealed by Session Laws 2003-284, s. 43.1, effective for taxable years beginning on or after January 1, 2004.

(6) Repealed by Session Laws 2005-276, s. 38.4(a), effective for taxable years beginning on or after January 1, 2007.

(e) Report and Payment. – Each taxpayer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The taxes imposed by this section shall be remitted to the Secretary with the report.

(f) Installment Payments Required. – Taxpayers that are subject to the tax imposed by this section and have a premium tax liability of ten thousand dollars ($10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment or an overpayment of an installment payment required by this subsection accrues interest in accordance with G.S. 105-241.21. An overpayment of tax shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. – This section does not apply to any of the following:

(1) A farmers' mutual assessment fire insurance company.

(2) A fraternal order or society that does not operate for a profit and does not issue policies on any person except members.

(3) A captive insurance company taxed under G.S. 105-228.4A.

(4) A foreign captive insurance company that is licensed in and taxed on its gross premiums in a jurisdiction within the United States other than this State. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, cc. 142, 1019; 1975, c. 143; c. 559, s. 8; 1979, c. 714, s. 2; 1983, c. 713, s. 81; 1985, c. 119, s. 3; c. 719, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1031, ss. 1-5; 1987, c. 709, s. 2; c. 814, s. 2; 1989 (Reg. Sess., 1990), c. 814, s. 27; 1991, c. 689, s. 297; 1993 (Reg. Sess., 1994), c. 600, s. 4; 1995, c. 360, s. 1(d); 1995 (Reg. Sess., 1996), c. 747, s. 2; 1998-98, s. 17;

2001-424, s. 34.22(a), (d), (e); 2001-487, s. 69(a); 2001-489, s. 2(a)-(d), (f), (g); 2003-284, s. 43.1; 2005-276, s. 38.4(a); 2005-435, s. 57(a); 2006-196, ss. 1-5; 2007-250, s. 1; 2007-491, s. 23; 2013-116, s. 6(c); 2013-360, s. 20.2(a); 2014-64, s. 3(b); 2016-5, s. 1.4; 2017-204, s. 1.11(a); 2018-5, s. 38.2(g).)

§ 105-228.5A. Credit against gross premium tax for assessments paid to the Insurance Guaranty Association and the Life and Health Insurance Guaranty Association.

(a) The following definitions apply in this section:

(1) Assessment. – An assessment as described in G.S. 58-48-35 or an assessment as described in G.S. 58-62-41.

(2) Association. – The North Carolina Insurance Guaranty Association created under G.S. 58-48-25 or the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.

(3) Repealed by Session Laws 1995, c. 360, s. 1(e).

(4) Member insurer. – A member insurer as defined in G.S. 58-48-20 or a member insurer as defined in G.S. 58-62-16.

(b) A member insurer who pays an assessment is allowed as a credit against the tax imposed under G.S. 105-228.5 an amount equal to twenty percent (20%) of the amount of the assessment in each of the five taxable years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all assessments for which it has not taken a credit under this section may be credited against its premium tax liability for the year in which it ceases doing business. The amount of the credit allowed by this section may not exceed the member insurer's premium tax liability for the taxable year.

(c) Any sums that are acquired by refund, under either G.S. 58-48-35 or G.S. 58-62-41, from the Association by member insurers, and that have previously been offset against premium taxes as provided in subsection (b) of this section, shall be paid by the member insurers to this State in the manner required by the Secretary of Revenue. The Association shall notify the Secretary that the refunds have been made. (1991, c. 689, s. 298; 1991 (Reg. Sess., 1992), c. 1007, s. 8; 1995, c. 360, s. 1(e).)

§ 105-228.5B. Distribution of part of tax proceeds to High Risk Pool.

By November 1 of each year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund established in G.S. 58-50-225 an amount equal to thirty percent (30%) of the growth in revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less $475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision. (2007-532, s. 4(a), (b); 2008-118, s. 3.2(d), (e); 2009-445, s. 10.)

§ 105-228.6. Taxes in case of withdrawal from State.

Any insurance company which for any cause withdraws from this State or ceases to register and transact new business in this State shall be liable for the taxes specified in G.S. 105-228.5 with respect to gross premiums collected in the calendar year in which such withdrawal may occur. In case any company which was formerly licensed or registered in this State and which subsequently ceased to do business therein, may apply to reenter this State, application for reentry or renewal of registration shall be denied unless and until said company shall have paid all taxes, together with any penalties and interest, due as to premiums collected in the year of withdrawal and also taxes as specified in G.S. 105-228.5 for gross premiums collected in the calendar year next preceding the year in which such application for renewal of registration is made. (1945, c. 752, s. 2; 1985 (Reg. Sess., 1986), c. 1031, s. 5.1; 1987, c. 814, s. 4; 1989, c. 346, s. 1.)

§ 105-228.7: Repealed by Session Laws 1987, c. 629, s. 21.

§ 105-228.8. Retaliatory premium taxes.

(a) When the laws of any other state impose, or would impose, any premium taxes, upon North Carolina companies doing business in the other state that are, on an aggregate basis, in excess of the premium taxes directly imposed upon similar companies by the statutes of this State, the Secretary of Revenue shall impose the same premium taxes, on an aggregate basis, upon the companies chartered in the other state doing business or seeking to do business in North Carolina. Any company subject to the retaliatory tax imposed by this section shall report and pay the tax with the annual premium tax return required by G.S. 105-228.5. The retaliatory tax imposed by this section shall be included in the quarterly prepayment rules for premium taxes.

(b) For purposes of this section, the following definitions shall be applied:

(1) "State" includes the District of Columbia and other states, territories, and possessions of the United States, the provinces of Canada, and other nations.

(2) "Companies" includes all entities subject to tax under G.S. 105-228.5.

(c) For purposes of this section, any premium taxes that are, or would be, imposed upon North Carolina companies by any city, county, or other political subdivision or agency of another state shall be deemed to be imposed directly by that state.

(d) In computing the premium taxes that another state imposes, or would impose, upon a North Carolina company doing business in the state, it shall be assumed that North Carolina companies pay the highest rates of premium tax that are generally imposed by the other state on similar companies chartered outside of the state.

(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums.

(f) If the laws of another state retaliate against North Carolina companies on other than an aggregate basis, the Secretary of Revenue shall retaliate against companies

chartered in that state on the same basis. (1945, c. 752, s. 2; 1987, c. 814, s. 1; 1989 (Reg. Sess., 1990), c. 1069, s. 21; 1991, c. 689, s. 291; 1995, c. 360, s. 1(f); 2011-330, s. 10.)

§ 105-228.9. Commissioner of Insurance to administer portions of Article.

The following taxes relating to insurance are collected by the Commissioner of Insurance:

(1) Surplus lines tax, G.S. 58-21-85.
(2) Tax on risk retention groups not chartered in this State, G.S. 58-22-20(3).
(3) Tax on person procuring insurance directly with an unlicensed insurer, G.S. 58-28-5(b).

The Commissioner of Insurance has the same authority and responsibility in administering those taxes as the Secretary of Revenue has in administering this Article. (1945, c. 752, s. 2; 1955, c. 1350, s. 22; 1973, c. 476, s. 193; 1987, c. 804, s. 9; 1995, c. 360, s. 1(a); 1995 (Reg. Sess., 1996), c. 747, s. 1.)

§ 105-228.10. No additional local taxes.

No city or county may levy on a person subject to the tax levied in this Article a privilege tax or a tax computed on the basis of gross premiums. (1945, c. 752, s. 2; 1998-98, s. 18.)

Article 8C.

Schedule I-C. Excise Tax on Banks.

§§105-228.11 through 105-228.20: Repealed by Session Laws 1973, c. 1053, s. 1.

§ 105-228.21: Omitted.

Article 8D.

Taxation of Savings and Loan Associations.

§§ 105-228.22 through 105-228.24: Repealed by Session Laws 1998-98, s. 1(a).

§ 105-228.24A: Recodified as § 105-130.43 by Session Laws 1998-98, s. 1(d).

§§ 105-228.25 through 105-228.27: Repealed by Session Laws 1983, c. 26, s. 1.

Article 8E.

Excise Tax on Conveyances.

§ 105-228.28. Scope.

This Article applies to every person conveying an interest in real estate located in North Carolina other than a governmental unit or an instrumentality of a governmental unit. (1967, c. 986, s. 1; 1999-28, s. 1.)

§ 105-228.29. Exemptions.

This Article does not apply to any of the following transfers of an interest in real property:

(1) By operation of law.
(2) By lease for a term of years.
(3) By or pursuant to the provisions of a will.
(4) By intestacy.
(5) By gift.
(6) If no consideration in property or money is due or paid by the transferee to the transferor.
(7) By merger, conversion, or consolidation.
(8) By an instrument securing indebtedness. (1967, c. 986, s. 1; 1999-28, s. 1; 1999-369, s. 5.10(a)-(c).)

§ 105-228.30. Imposition of excise tax; distribution of proceeds.

(a) An excise tax is levied on each instrument by which any interest in real property is conveyed to another person. The tax rate is one dollar ($1.00) on each five hundred dollars ($500.00) or fractional part thereof of the consideration or value of the interest conveyed. The transferor must pay the tax to the register of deeds of the county in which the real estate is located before recording the instrument of conveyance. If the instrument transfers a parcel of real estate lying in two or more counties, however, the tax must be paid to the register of deeds of the county in which the greater part of the real estate with respect to value lies.

The excise tax on instruments imposed by this Article applies to timber deeds and contracts for the sale of standing timber to the same extent as if these deeds and contracts conveyed an interest in real property.

(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less taxes refunded and the county's allowance for administrative expenses, to the Department of Revenue on a monthly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. The Department of Revenue shall credit the funds remitted to the Department of Revenue under this subsection to the General Fund. (1967, c. 986, s. 1; 1991, c. 689, s. 338; 1991 (Reg. Sess., 1992), c. 1019, s. 1; 1993 (Reg. Sess., 1994), c. 772, s. 2; 1995, c. 456, s. 3; 1999-28, s. 1; 2000-16, s. 1; 2001-427, s. 14(a); 2011-330, s. 30(b); 2013-360, s. 14.4(a).)

§ 105-228.31. Repealed by Session Laws 1999-28, s. 1.

§ 105-228.32. Instrument must be marked to reflect tax paid.

A person who presents an instrument for registration must report to the Register of Deeds the amount of tax due. It is the duty of the person presenting the instrument for registration to report the correct amount of tax due. Before the instrument may be recorded, the Register of Deeds must collect the tax due and mark the instrument to indicate that the tax has been paid and the amount of the tax paid. (1967, c. 986, s. 1; 1969, c. 599, s. 1; 1973, c. 476, s. 193; 1999-28, s. 1; 2009-454, s. 2.)

§ 105-228.33. Taxes recoverable by action.

A county may recover unpaid taxes under this Article in an action in the name of the county brought in the superior court of the county. The action may be filed if the taxes remain unpaid more than 30 days after the register of deeds has demanded payment. In such actions, costs of court shall include a fee to the county of twenty-five dollars ($25.00) for expense of collection. (1967, c. 986, s. 1; 1999-28, s. 1.)

§ 105-228.34: Repealed by Session Laws 1999-28, s. 1.

§ 105-228.35. Administrative provisions.

Except as otherwise provided in this Article, the provisions of Article 9 of this Chapter apply to this Article. (1967, c. 986, s. 1; 1999-28, s. 1; 2000-170, s. 1.)

§ 105-228.36: Repealed by Session Laws 1999-28, s. 1.

§ 105-228.37. Refund of overpayment of tax.

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must conduct a hearing on a request for refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90 days after conducting a hearing under this subsection.

(c) Process if Refund Granted. – If the board of commissioners decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer and inform the Department of the refund. The Department may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the Department disagrees with the board's decision.

(d) Process if Refund Denied. – If the board of commissioners finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may

request a departmental review of the denial of the refund in accordance with the procedures set out in G.S. 105-241.11.

(e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. – An overpayment of tax bears interest at the rate established in G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners. (2000-170, s. 2; 2007-491, s. 24; 2011-330, s. 30(a).)

§§ 105-228.38 through 105-228.89. Reserved for future codification purposes.

Article 9.

General Administration; Penalties and Remedies.

§ 105-228.90. Scope and definitions.

(a) Scope. – This Article applies to all of the following:

(1) Subchapters I, V, and VIII of this Chapter.

(2) The annual report filing requirements of G.S. 55-16-22.

(3) The primary forest product assessment levied under Article 81 of Chapter 106 of the General Statutes.

(4) The inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.

(5) Chapter 105A of the General Statutes.

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

(1) Charter school. – A nonprofit corporation that has a charter under G.S. 115C-218.5 to operate a charter school.

(1a) City. – A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

(1b) Code. – The Internal Revenue Code as enacted as of February 9, 2018, including any provisions enacted as of that date that become effective either before or after that date.

(1c) County. – Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).

(2) Department. – The Department of Revenue.

(3) Electronic Funds Transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(3a) Federal determination. – A change or correction of the amount of a federal tax due arising from an audit by the Commissioner of Internal Revenue.

(4) Income tax return preparer. – Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by Article 4 of this Chapter or any claim for refund of tax imposed by Article 4 of this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

(4b) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.

(4d) Pass-through entity. – An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this section, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.

(5) Person. – An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.

(6) Secretary. – The Secretary of Revenue.

(7) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter, the primary forest product assessment levied under Article 81 of Chapter 106 of the General Statutes, or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the term "tax" includes penalties and interest as well as the principal amount.

(8) Taxpayer. – A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes. (1991 (Reg. Sess., 1992), c. 930, s. 13; 1993, c. 12, s. 1; c. 354, s. 18; c. 450, s. 1; 1993 (Reg. Sess., 1994), c. 662, s. 1; c. 745, s. 13; 1995, c. 17, s. 9; c. 461, s. 14; 1995 (Reg. Sess., 1996), c. 664, s. 1; 1997-55, s. 1; 1997-475, s. 6.9; 1998-171, s. 1; 1999-415, s. 1; 2000-72, s. 1; 2000-126, s. 1; 2000-140, s. 69; 2001-414, s. 23; 2001-427, s. 4(a); 2002-106, s. 1; 2002-126, s. 30C.1(a); 2003-25, s. 1; 2003-284, s. 37A.1; 2003-416, s. 4(d); 2004-110, s. 1.1; 2005-276, ss. 35.1(a), (d); 2006-18, s. 1; 2007-323, s. 31.1(a); 2007-491, s. 25; 2008-107, s. 28.1(a); 2009-451, s. 27A.6(a), (b); 2010-31, s. 31.1(a); 2011-5, s. 1; 2011-145, s. 13.25(xx); 2011-330, ss. 11, 31(a), 37; 2012-79, s. 1.7(a); 2013-10, s. 1; 2014-3, s. 14.16(a); 2014-101, s. 7; 2015-2, s. 1.1; 2016-6, s. 1; 2017-39, s. 1; 2018-5, ss. 38.1(a), 38.3(g).)

§ 105-229: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 9.

§ 105-230. Charter suspended for failure to report.

(a) If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company so suspended of its suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension.

(b) Any act performed or attempted to be performed during the period of suspension is invalid and of no effect, unless the Secretary of State reinstates the corporation or limited liability company pursuant to G.S. 105-232. However, a suspended entity's state tax filing obligations and the payment of its tax liability is not affected by the suspension, nor does a suspension affect the liability of a responsible person under G.S. 105-242.2, whether the obligation or liability is enforced in the context of a civil or criminal proceeding or otherwise. (1939, c. 158, ss. 901, 902; 1957, c. 498; 1967, c. 823, s. 31; 1969, c. 965, s. 2; 1973, c. 476, s. 193; 1987, c. 644, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 19(a); 1993, c. 354, ss. 19, 20; 1998-212, s. 29A.14(l); 2001-387, s. 152; 2018-5, s. 38.10(a).)

§ 105-231: Recodified as the second paragraph of § 105-230 by S.L. 1998-212, s. 29A.14(k).

§ 105-232. Rights restored; receivership and liquidation.

(a) Any corporation or limited liability company whose articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to the suspension, in the same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a fee of twenty-five dollars ($25.00) to cover the cost of reinstatement, is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of this compliance and the Secretary of State shall reinstate the corporation or limited liability company by appropriate entry upon the records of the office of the Secretary of State. Upon entry of reinstatement, it relates back to and takes effect as of the date of the suspension by the Secretary of State and the corporation or limited liability company resumes carrying on its business as if the suspension had never occurred, subject to the rights of any person who reasonably relied, to that person's prejudice, upon the suspension. The Secretary of State shall immediately notify by mail the corporation or limited liability company of the reinstatement.

(b) When the articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, and the corporation or limited liability company has ceased to operate as a going concern, if there remains property held in the name of the corporation or limited liability company or undisposed of at the time of the suspension, or there remain future interests that may accrue to the corporation, the limited liability company, or its successors, members, or stockholders, any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all stockholders, members, or their representatives or next of kin shall be made parties. Stockholders or members whose whereabouts are unknown, unknown stockholders or members, unknown heirs and next of kin of deceased stockholders, members, creditors, dealers, and other interested persons may be served by publication. A guardian ad litem may be appointed for any stockholders, members, or their representatives who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the corporation or limited liability company upon such terms and in such manner as the court may order, (ii) apply the proceeds to the payment of any debts of the corporation or limited liability company, and (iii) distribute the remainder among the stockholders, the members, or their representatives in proportion to their interests in the property interests. Shares due to any stockholder or member who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, to be disbursed according to law. In the event the records of the corporation or limited liability company are lost or do not reflect the owners of the property interests, the court shall determine the owners from the best evidence available, and the receiver shall be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of

providing a procedure for disposing of the assets of the corporation or limited liability company by the payment of its debts and by the transfer to its stockholders, its members, or their representatives their proportionate shares of its assets. (1939, c. 158, s. 903; c. 370, s. 1; 1943, c. 400, s. 9; 1947, c. 501, s. 9; 1951, c. 29; 1969, c. 541, s. 10; 1973, c. 476, s. 193; c. 1065; 1987, c. 644, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 19(b); 1991, c. 645, s. 21; 1993, c. 354, s. 21; 2001-387, s. 153; 2001-487, s. 62(dd).)

§ 105-233: Repealed by Session Laws 2006-162, s. 12(a), effective July 24, 2006.

§ 105-234: Repealed by Session Laws 2006-162, s. 12(a), effective July 24, 2006.

§ 105-235. Every day's failure a separate offense.

The willful failure, refusal, or neglect to observe and comply with any order, direction, or mandate of the Secretary of Revenue, or to perform any duty enjoined by this Subchapter, by any person, firm, or corporation subject to the provisions of this Subchapter, or any officer, agent, or employee thereof, shall, for each day such failure, refusal, or neglect continues, constitute a separate and distinct offense. (1939, c. 158, s. 906; 1973, c. 476, s. 193.)

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

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

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

(1a) Penalty for Bad Electronic Funds Transfer. – When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. – For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary

shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000).

(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 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. 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.

(5) Negligence. –

a. Finding of negligence. – For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large individual income tax deficiency. – In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.

c. Other large tax deficiency. – In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.

d. No double penalty. – If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.

e. Repealed by Session Laws 2013-316, s. 7(c), effective January 1, 2013, and applicable to estates of decedents dying on or after that date.

f. Consolidated or combined return. – The amount of tax shown as due on a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter is not considered a deficiency and is not subject to this subdivision unless one or more of the following applies:

1. The return is an amended consolidated or combined return that includes the same corporations as the initial consolidated or combined return filed at the request of the Secretary. In this case the deficiency is the extent to which the amount shown as due on the amended return exceeds the amount shown as due on the initial return.

2. Repealed by Session Laws 2011-390, s. 5, effective January 1, 2012.

3. Pursuant to a written request from a taxpayer, the Secretary has provided written advice to that taxpayer stating that the Secretary will require a consolidated or combined return under the facts and circumstances set out in the request, and the Secretary requires a taxpayer to file a consolidated or combined return under G.S. 105-130.5A because the taxpayer's facts and circumstances meet those described in the written advice.

(5a) Misuse of Exemption Certificate. – For misuse of an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of exemption, a direct pay certificate, and a conditional exemption certificate.

(5b) Road Tax Understatement. – If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. – If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person required to pay any tax, to file a return, to keep any records, or to supply any information, who willfully fails to pay the tax, file the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, is, in addition to other penalties provided by law, guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision is barred before the expiration of six years after the date of the violation.

(9a) Aid or Assistance. – Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, is guilty of a felony as follows:

a. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony.

b. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

c. If the person who commits an offense under this subdivision is not covered under sub-subdivision a. or b. of this subdivision, the person is guilty of a Class H felony.

(9b) Identity Theft. – A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently utilize that information in a submission to the Department to obtain anything of value, benefit, or advantage for themselves or another is guilty of a Class G felony. If the person whose identifying information is obtained, possessed, or used by another in this manner suffers any adverse financial

impact as a proximate result of the offense, then the person who obtained, possessed, or used the identifying information is guilty of a Class F felony. Each person's identity obtained, possessed, or used in this manner shall count as a separate offense. The term "identifying information" as used in this subdivision includes the following:

a. Legal name.
b. Date of birth.
c. Social Security Number.
d. Taxpayer Identification Number.
e. Federal Identification Number.
f. Bank account numbers.
g. Federal or State tax or tax return information.

(10) Penalties Regarding Informational Returns. – The following penalties apply with regard to an informational return required by Article 4A, 5, 9, 36C, or 36D of this Chapter:

a. Repealed by Session Laws 1998-212, s. 29A.14(m), effective January 1, 1999.
b. Repealed by Session Laws 2018-5, s. 38.10(p), effective June 12, 2018.
c. **(Effective for taxable years beginning before January 1, 2016)** For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed a penalty of fifty dollars ($50.00).
c. **(Effective for taxable years beginning on or after January 1, 2016)** For failure to file with the Secretary by the date the return is due, the Secretary shall assess a penalty of fifty dollars ($50.00) per day, up to a maximum penalty of one thousand dollars ($1,000).
d. For failure to file in the format prescribed by the Secretary, the Secretary shall assess a penalty of two hundred dollars ($200.00).

(10a) Filing a Frivolous Return. – If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of up to five hundred dollars ($500.00). A frivolous return is a return that meets both of the following requirements:

a. It fails to provide sufficient information to permit a determination that the return is correct or contains information which positively indicates the return is incorrect, and
b. It evidences an intention to delay, impede or negate the revenue laws of this State or purports to adopt a position that is lacking in seriousness.

(10b) Misrepresentation Concerning Payment. – A person who receives money from a taxpayer with the understanding that the money is to be remitted to the Secretary for application to the taxpayer's tax liability and who willfully fails to remit the money to the Secretary is guilty of a Class F felony.

(11) Repealed by Session Laws 2006-162, s. 12(b), effective July 24, 2006.

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Civilly, a violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. Criminally, a violation of a tax law shall not be considered an act committed at the office of the Secretary in Raleigh. The District Attorney

of the county where the charged offense occurred shall have sole jurisdiction to prosecute violations of tax law, but the Attorney General shall have concurrent jurisdiction in such prosecutions if the District Attorney requests, in writing, that the Attorney General prosecute the violation. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983; 1987 (Reg. Sess., 1988), c. 1076; 1989, c. 557, ss. 7 to 10; 1989 (Reg. Sess., 1990), c. 1005, s. 9; 1991, c. 45, s. 27; 1991 (Reg. Sess., 1992), c. 914, s. 2; c. 1007, s. 10; 1993, c. 354, s. 22; c. 450, s. 10; c. 539, ss. 709, 710, 1292, 1293; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 390, s. 36; 1995 (Reg. Sess., 1996), c. 646, s. 10; c. 647, s. 51; c. 696, s. 1; 1997-6, s. 8; 1997-109, s. 3; 1998-178, ss. 1, 2; 1998-212, s. 29A.14(m); 1999-415, ss. 2, 3; 1999-438, ss. 15, 16; 2000-119, s. 2; 2000-120, s. 7; 2000-140, s. 70; 2002-106, ss. 2, 4; 2005-276, s. 6.37(n); 2005-435, s. 1; 2006-162, s. 12(b); 2007-491, s. 26; 2008-107, s. 28.18(b); 2010-31, s. 31.10(a), (b); 2011-330, s. 32; 2011-390, s. 5; 2011-411, s. 8(b); 2012-79, s. 2.18(a); 2013-316, s. 7(c); 2013-414, s. 1(h); 2014-3, s. 3.1(c); 2015-259, s. 7.1(b); 2017-204, s. 3.1(a); 2018-5, s. 38.10(p); 2018-98, s. 2(a).)

§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.

(a) General. – The Secretary may appoint employees of the Unauthorized Substances Tax Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint up to 11 employees of the Motor Fuels Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D of this Chapter and by Chapter 119 of the General Statutes.

The Secretary may appoint employees of the Criminal Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) The felony and misdemeanor tax violations in G.S. 105-236.
(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120.
(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:
    a. G.S. 14-91 (Embezzlement of State Property).
    b. G.S. 14-92 (Embezzlement of Funds).

c. G.S. 14-100 (Obtaining Property By False Pretenses).
c1. G.S. 14-113.20 (Identity Theft).
c2. G.S. 14-113.20A (Trafficking in Stolen Identities).
d. G.S. 14-119 (Forgery).
e. G.S. 14-120 (Uttering Forged Paper).
f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).
g. G.S. 14-118.7 (Possession, transfer, or use of automated sales suppression device).

(b) Authority. – A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands.

(c) Qualifications. – To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Article 1 of Chapter 17C of the General Statutes. The Secretary may administer the oath of office to revenue law enforcement officers appointed pursuant to this section. (1997-503, s. 1; 2000-119, s. 1; 2004-124, s. 23.4; 2013-414, s. 17; 2014-3, s. 14.12; 2018-5, s. 17.1(a).)

§ 105-237. Waiver; installment payments.

(a) Waiver. – The Secretary may, upon making a record of the reasons therefor, do the following:

(1) Reduce or waive any penalties provided for in this Subchapter.
(2) Reduce or waive any interest provided for in this Subchapter on taxes imposed prior to or during a period for which a taxpayer has declared bankruptcy under Chapter 7 or Chapter 13 of Title 11 of the United States Code.

(b) Installment Payments. – After a proposed assessment of a tax becomes final, the Secretary may enter into an agreement with the taxpayer for payment of the tax in installments if the Secretary determines that the agreement will facilitate collection of the tax. The agreement may include a waiver of penalties but may not include a waiver of liability for tax or interest due. The Secretary may modify or terminate the agreement if one or more of the following findings is made:

(1) Information provided by the taxpayer in support of the agreement was inaccurate or incomplete.
(2) Collection of tax to which the agreement applies is in jeopardy.
(3) The taxpayer's financial condition has changed.
(4) The taxpayer has failed to pay an installment when due or to pay another tax when due.
(5) The taxpayer has failed to provide information requested by the Secretary.

The Secretary must give a taxpayer who has entered into an installment agreement at least 30 days' written notice before modifying or terminating the agreement on the grounds that the taxpayer's financial condition has changed unless the taxpayer failed to disclose or

concealed assets or income when the agreement was made or the taxpayer has acquired assets since the agreement was made that can satisfy all or part of the tax liability. A notice must specify the basis for the Secretary's finding of a change in the taxpayer's financial condition. (1939, c. 158, s. 908; c. 370, s. 1; 1973, c. 476, s. 193; 1993, c. 532, s. 1; 1999-438, s. 17; 2015-259, s. 7.2.)

§ 105-237.1. Compromise of liability.

(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

(1) There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the facts.

(2) The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to or in excess of the amount offered in compromise. A taxpayer is considered insolvent only in one of the following circumstances:

a. It is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future.

b. The taxpayer has been determined to be insolvent in a judicial proceeding.

(3) Collection of a greater amount than that offered in compromise is improbable, and the funds or a substantial portion of the funds offered in the settlement come from sources from which the Secretary could not otherwise collect.

(4) A federal tax assessment arising out of the same facts has been compromised with the federal government on the same or a similar basis as that proposed to the State and the Secretary could probably not collect an amount equal to or in excess of that offered in compromise.

(5) Collection of a greater amount than that offered in compromise would produce an unjust result under the circumstances.

(6) The taxpayer is a retailer or a person under Article 5 of this Chapter; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) through (a)(15), and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020.

(7) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in the definition of retailer or the sales tax base expansion to (i) service contracts, (ii) repair, maintenance, and installation services, or (iii) sales transactions for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022.

(b) Written Statement. – When the Secretary compromises a tax liability under this section and the amount of the liability is at least one thousand dollars ($1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the

findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement. If the compromise settles a dispute that is in litigation, the Secretary must obtain the approval of the Attorney General before accepting the compromise, and the Attorney General must sign the statement describing the compromise. (1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1973, c. 476, s. 193; 1985, c. 114, s. 11; 1991 (Reg. Sess., 1992), c. 1007, s. 11; 2008-107, s. 28.16(f); 2013-316, s. 9(b); 2015-241, s. 32.18(f); 2016-94, s. 38.5(b); 2018-5, s. 38.10(c).)

§ 105-238. Tax a debt.

Every tax imposed by this Subchapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a debt from the person, firm, or corporation liable to pay the same to the State of North Carolina. (1939, c. 158, s. 909.)

§ 105-239: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-239.1. Transferee liability.

(a) Lien and Liability. – Property transferred for an inadequate consideration to a donee, heir, devisee, distributee, stockholder of a liquidated corporation, or any other person at a time when the transferor is insolvent or is rendered insolvent by reason of the transfer is subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of the transfer whether or not the amount of the taxes has been ascertained or assessed at the time of the transfer. G.S. 105-241 applies to this tax lien. In the event the transferee has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee is personally liable for the difference between the fair market value of the property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee.

(b) Procedure. – The Department may proceed to enforce a lien that arises under this section against property transferred by a taxpayer to another person or to hold that person liable for the tax due by sending the person a notice of proposed assessment in accordance with G.S. 105-241.9. The Department has the burden of establishing that a person to whom property was transferred is liable. The period of limitations for assessment of any liability against a transferee or enforcing the lien against the transferred property expires one year after the expiration of the period of limitations for assessment against the transferor.

(c) Proceeds. – When property transferred by a taxpayer to another person is sold to satisfy the lien that arises under this section, the person is entitled to receive from the proceeds of the sale the amount of consideration, if any, the person paid for the property. The proceeds must be applied for this purpose before they are applied to satisfy the lien.

(d) Repealed by Session Laws 2007-491, s. 27, effective January 1, 2008. (1957, c. 1340, s. 10; 1973, c. 476, s. 193; 1993, c. 450, s. 11; 2007-491, s. 27; 2011-284, s. 69.)

§ 105-240. Tax upon settlement of fiduciary's account.

No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this

Subchapter upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the Secretary of Revenue and the receipt for the amount of tax herein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the Secretary of Revenue, with the approval of the Attorney General, may, on behalf of the State, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this Subchapter, and the payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. (1939, c. 158, s. 911; 1973, c. 476, s. 193.)

§ 105-240.1. Agreements with respect to domicile.

Whenever reasonably necessary in order to facilitate the collection of any tax, the Secretary of Revenue with the consent and approval of the Attorney General, is authorized to make agreements with the taxing officials of other states of the United States or with taxpayers in cases of disputes as to the domicile of a decedent. (1957, c. 1340, s. 10; 1973, c. 476, s. 193.)

§ 105-241. Where and how taxes payable; tax period; liens.

(a) Form of Payment. – Taxes are payable in the national currency. The Secretary shall prescribe where taxes are to be paid and whether taxes must be paid in cash, by check, by electronic funds transfer, or by another method.

(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

(1) Corporate estimated taxes. – A corporation that is required under the Code to pay its federal-estimated corporate income tax by electronic funds transfer must pay its State-estimated corporate income tax by electronic funds transfer as provided in G.S. 105-163.40.

(2) Prepayment taxes. – A taxpayer that is required to prepay tax under G.S. 105-116 or G.S. 105-164.16 must pay the tax by electronic funds transfer.

(2a) Motor fuel taxes. – A taxpayer that 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.

(3) Large tax payments. – Except as otherwise provided in this subsection, the Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. The twenty thousand dollar ($20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary must determine whether, during the applicable period for that tax, the average

amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. If it was not, the Secretary must suspend the requirement that the taxpayer pay the tax by electronic funds transfer and must notify the taxpayer in writing that the requirement has been suspended.

(c) Tax Period. – Except as otherwise provided in this Chapter, taxes are levied for the fiscal year of the state in which they became due.

(d) Lien. – This subsection applies except when another Article of this Chapter contains contrary provisions with respect to a lien for a tax levied in that Article. The lien of a tax attaches to all real and personal property of a taxpayer on the date a tax owed by the taxpayer becomes due. The lien continues until the tax and any interest, penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona fide purchaser for value or the holder of a duly recorded lien unless:

(1) In the case of real property, a certificate of tax liability or a judgment was first docketed in the office of the clerk of superior court of the county in which the real property is located.

(2) In the case of personal property, there has already been a levy on the property under an execution or a tax warrant.

The priority of these claims and liens is determined by the date and time of recording, docketing, levy, or bona fide purchase.

If a taxpayer executes an assignment for the benefit of creditors or if insolvency proceedings are instituted against a taxpayer who owes a tax, the tax lien attaches to all real and personal property of the taxpayer as of the date and time the taxpayer executes the assignment for the benefit of creditors or the date and time the insolvency proceedings are instituted. In these cases, the tax lien is subject only to a prior recorded specific lien and the reasonable costs of administering the assignment or the insolvency proceedings. (1939, c. 158, s. 912; 1949, c. 392, s. 6; 1957, c. 1340, s. 5; 1993, c. 450, s. 2; 1999-389, s. 8; 2001-427, s. 6(b); 2005-435, s. 2; 2007-527, s. 31; 2010-95, s. 25; 2012-79, s. 2.15.)

§ 105-241.01. Electronic filing of returns.

(a) Purpose. – The General Assembly finds that the various statutes within Chapter 105 of the General Statutes that address the filing of tax returns or informational returns were originally drafted for the use of paper returns submitted either personally or through the mail. Through technological advances, there are many methods by which tax returns can be filed electronically that can be processed more efficiently by the Department of Revenue, are easier and more convenient for taxpayers, improve the accuracy of the return, and are safer to use with respect to identity theft.

The General Assembly further finds that, in some cases, it is proper to require returns to be filed electronically, while in other cases it is more appropriate to provide electronic filing as an option instead of a requirement. In addition, the General Assembly recognizes that, because of constant technological advances, it is necessary to allow the Department of Revenue flexibility to provide specific guidance for how to file returns electronically, with a goal of continually improving the process and reducing the costs of and time to process returns.

(b) Electronically Filed Returns. – The Department shall offer electronic filing for returns required under this Chapter if the Department determines that it is cost-effective to do so and the Department has established and implemented procedures to electronically file specific returns.

(c) Form of Filing Electronically; Electronic Signature. – The Secretary shall prescribe the form of electronically filing each return that is required to or may be filed electronically and how the taxpayer or return preparer signs an electronically filed return.

(d) Waiver of Requirement to File Electronically. – The Secretary may, upon showing of good cause, waive any electronic submission requirement for returns required to be filed electronically under this Chapter.

(e) Notice to Taxpayers. – The Department shall, by December 1 of each year, publish on its Web site a list of returns required to be filed electronically and permitted to be filed electronically during the next calendar year. (2018-5, s. 38.10(r).)

§ 105-241.1: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-241.2: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-241.3: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-241.4: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-241.5: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-241.6. Statute of limitations for refunds.

(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

(1) Three years after the due date of the return.

(2) Two years after payment of the tax.

(b) Exceptions. – The exceptions to the general statute of limitations for obtaining a refund of an overpayment are as follows:

(1) Federal Determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for requesting a refund is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later.

(2) Waiver. – A taxpayer's waiver of the statute of limitations for making a proposed assessment extends the period in which the taxpayer can obtain a refund to the end of the period extended by the waiver.

(3) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(4) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(5) Contingent Event. – The period to request a refund of an overpayment may be extended as provided in this subdivision if an event or condition prevents the taxpayer from possessing the information necessary to file an accurate and definite request for a refund of an overpayment under this Chapter:

a. If a taxpayer is subject to a contingent event and files written notice with the Secretary, the period to request a refund of an overpayment is six months after the contingent event concludes. For purposes of this subdivision, a "contingent event" means litigation or a state tax audit initiated prior to the expiration of the statute of limitations under subsection (a) of this section, the pendency of which prevents the taxpayer from possessing the information necessary to file an accurate and definite request for a refund of an overpayment under this Chapter. The written notice to the Secretary must be filed prior to expiration of the statute of limitations under subsection (a) of this section for a return or payment in which a contingent event prevents a taxpayer from filing a definite request for a refund of an overpayment. The notice must identify and describe the contingent event, identify the type of tax, list the return or payment affected by the contingent event, and state in clear terms the basis for and an estimated amount of the overpayment.

b. If a taxpayer contends that an event or condition other than a contingent event, as defined in this subdivision, has occurred that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under subsection (a) of this section, the taxpayer may submit a written request to the Secretary seeking an extension of the statute of limitations allowed under this subdivision. The request must establish by clear, convincing proof that the event or condition is beyond the taxpayer's control and that it prevents the taxpayer's timely filing of an accurate and definite request for a refund of an overpayment. The request must be filed within the period under subsection (a) of this section. The Secretary's decision on the request is final and is not subject to administrative or judicial review.

(6) **(Expires December 19, 2016)** Wrongfully Incarcerated Individuals. – If a request for a refund of an overpayment of tax under Section 139F of the Code for a taxable year prior to 2016 is barred by the operation of any law or rule of law, the refund may nevertheless be allowed if the claim for the refund is filed

by December 18, 2016. (2007-491, s. 1; 2013-414, s. 47(a); 2015-6, s. 2.16; 2016-6, s. 5(a).)

§ 105-241.7. Procedure for obtaining a refund.

(a) Initiated by Department. – The Department must refund an overpayment made by a taxpayer if the Department discovers the overpayment before the expiration of the statute of limitations for obtaining a refund. Discovery occurs in any of the following circumstances:

(1) The automated processing of a return indicates the return requires further review.

(2) A review of a return by an employee of the Department indicates an overpayment.

(3) An audit of a taxpayer by an employee of the Department indicates an overpayment.

(b) Initiated by Taxpayer. – A taxpayer may request a refund of an overpayment made by the taxpayer by taking one of the actions listed in this subsection within the statute of limitations for obtaining a refund. A taxpayer may not request a refund of an overpayment based on a contingent event as defined in G.S. 105-241.6(b)(5) until the event is finalized and an accurate and definite request for refund of an overpayment may be determined. The actions are:

(1) Filing an amended return reflecting an overpayment due the taxpayer.

(2) Filing a claim for refund. The claim must identify the taxpayer, the type and amount of tax overpaid, the filing period to which the overpayment applies, and the basis for the claim. The taxpayer's statement of the basis of the claim does not limit the taxpayer from changing the basis.

(c) Action on Request. – When a taxpayer files an amended return or a claim for refund, the Department must take one of the actions listed in this subsection within six months after the date the amended return or claim for refund is filed. If the Department does not take one of these actions within this time limit, the inaction is considered a proposed denial of the requested refund.

(1) Send the taxpayer a refund of the amount shown due on the amended return or claim for refund.

(2) Adjust the amount of the requested refund by increasing or decreasing the amount shown due on the amended return or claim for refund and send the taxpayer a refund of the adjusted amount. If the adjusted amount is less than the amount shown due on the amended return or claim for refund, the adjusted refund must include a reason for the adjustment. The adjusted refund is considered a notice of proposed denial for the amount of the requested refund that is not included in the adjusted refund.

(3) Deny the refund and send the taxpayer a notice of proposed denial.

(4) Send the taxpayer a letter requesting additional information concerning the requested refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and send the taxpayer a notice of proposed denial. If a taxpayer provides the requested information, the Department must take one of the actions listed in this subsection within the later of the following:

a. The remainder of the six-month period.
b. 30 days after receiving the information.
c. A time period mutually agreed upon by the Department and the taxpayer.

(c1) Action on Request Regarding Statute of Limitations. – When the taxpayer files an amended return or a claim for refund which the Department determines to be outside the statute of limitations, the Department must deny the refund and send the taxpayer a notice of denial.

(d) Notice. – A notice of a proposed denial of a request for refund issued pursuant to subsection (c) of this section and a notice of denial of a request for a refund issued pursuant to subsection (c1) of this section must contain the following information:

(1) The basis for the denial or the proposed denial. The statement of the basis of the denial does not limit the Department from changing the basis.
(2) The circumstances under which a proposed denial will become final.

(e) Restrictions. – The Department may not refund any of the following:

(1) Until a taxpayer files a final return for a tax period, an amount paid before the final return is filed.
(2) An overpayment setoff under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.
(3) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.
(4) An individual income tax overpayment of less than one dollar ($1.00) or another tax overpayment of less than three dollars ($3.00), unless the taxpayer files a written claim for the refund.

(f) Effect of Denial or Refund. – A proposed denial of a refund and a denial of a refund by the Secretary are presumed to be correct. A refund does not absolve a taxpayer of a tax liability that may in fact exist. The Secretary may propose an assessment for any deficiency as provided in this Article. (2007-491, s. 1; 2011-4, s. 1; 2013-414, s. 47(b); 2016-76, s. 2(a); 2017-204, s. 4.1(a).)

§ 105-241.8. Statute of limitations for assessments.

(a) General. – The general statute of limitations for proposing an assessment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for proposing an assessment is the later of the following:

(1) Three years after the due date of the return.
(2) Three years after the taxpayer filed the return.

(b) Exceptions. – The exceptions to the general statute of limitations for proposing an assessment are as follows:

(1) Federal determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for proposing an assessment of any tax due is one year after the return is filed or three years after the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the return within the required time, the period for proposing an assessment

of any tax due is three years after the date the Secretary received the final report of the federal determination.

(1a) Federal amended return. – If a taxpayer files a return as a result of filing a federal amended return and the return is filed within the time required by this Subchapter, the period for proposing an assessment of any tax due is one year after the return is filed or three years after the original return was filed or due to be filed, whichever is later. If the taxpayer does not file the return within the required time, the period for proposing an assessment of any tax due is three years after the date the federal amended return was filed with the Commissioner of Internal Revenue.

(2) Failure to file or filing false return. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if any of the following applies:

a. The taxpayer did not file a return.

b. The taxpayer filed a fraudulent return.

c. The taxpayer attempted in any manner to fraudulently evade or defeat the tax.

(3) Tax forfeiture. – If a taxpayer forfeits a tax credit or tax benefit pursuant to forfeiture provisions of this Chapter, the period for proposing an assessment of any tax due as a result of the forfeiture is three years after the date of the forfeiture.

(4) Nonrecognition of gain. – If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the period for proposing an assessment of any tax due as a result of the conversion or election is the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. (2007-491, s. 1; 2018-5, s. 38.3(e).)

§ 105-241.9. Procedure for proposing an assessment.

(a) Authority. – The Secretary may propose an assessment against a taxpayer for tax due from the taxpayer. The Secretary must base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct.

(b) Time Limit. – The Secretary must propose an assessment within the statute of limitations for proposed assessments unless the taxpayer waives the limitations period before it expires by agreeing in writing to extend the period. A taxpayer may waive the limitations period for either a definite or an indefinite time. If the taxpayer waives the limitations period, the Secretary may propose an assessment at any time within the time extended by the waiver.

(c) Notice. – The Secretary must give a taxpayer written notice of a proposed assessment. The notice of a proposed assessment must contain the following information:

(1) The basis for the proposed assessment. The statement of the basis for the proposed assessment does not limit the Department from changing the basis.

(2) The amount of tax, interest, and penalties included in the proposed assessment. The amount for each of these must be stated separately.

(2a) The date a failure to pay penalty will apply to the proposed assessment if the proposed assessment is not paid by that date and the amount of the penalty. If the proposed assessment is not paid by the specified date, the failure to pay penalty is considered to be assessed and applies to the proposed assessment without further notice.

(3) The circumstances under which the proposed assessment will become final and collectible. (2007-491, s. 1; 2010-95, s. 8(a); 2011-330, s. 34.)

§ 105-241.10. Limit on refunds and assessments after a federal determination.

The limitations in this section apply when a taxpayer files a timely return reflecting a federal determination that affects the amount of State tax payable and the general statute of limitations for requesting a refund or proposing an assessment of the State tax has expired. A return reflecting a federal determination is timely if it is filed within the time required by G.S. 105-130.20, 105-159, 105-160.8, or 105-163.6A, as appropriate. A federal determination has the same meaning as defined in G.S. 105-228.90. The limitations are:

(1) Refund. – A taxpayer is allowed a refund only if the refund is the result of adjustments related to the federal determination.

(2) Assessment. – A taxpayer is liable for additional tax only if the additional tax is the result of adjustments related to the federal determination. A proposed assessment may not include an amount that is outside the scope of this liability. (2007-491, s. 1; 2008-107, s. 28.18(d); 2013-316, s. 7(b); 2018-5, s. 38.3(f).)

§ 105-241.11. Requesting review of a proposed denial of a refund or a proposed assessment.

(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request for review must be in the form prescribed by the Secretary and include an explanation for the request for review. The request must be filed with the Department as follows:

(1) Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.

(2) Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.

(3) At any time between the date that inaction by the Department on a request for refund is considered a proposed denial of the refund and the date the time periods set in the other subdivisions of this subsection expire.

(b) Filing. – A request for a Departmental review of a proposed denial of a refund or a proposed assessment is considered filed on the following dates:

(1) For a request that is delivered in person, the date it is delivered.

(2) For a request that is mailed, the date determined in accordance with G.S. 105-263.

(3) For a request delivered by another method, the date the Department receives it.

(c) FTP Penalty. – A request for a Departmental review of a proposed assessment is considered a request for a Departmental review of a failure to pay penalty that is based on the assessment. A taxpayer who does not request a Departmental review of a proposed assessment may not request a Departmental review of a failure to pay penalty that is based on the assessment but is assessed on a subsequent date in another notice. (2007-491, s. 1; 2008-134, s. 5(a); 2010-95, ss. 8(b), 10(b); 2017-204, s. 4.1(b).)

§ 105-241.12. Result when taxpayer does not request a review.

(a) Refund. – If a taxpayer does not file a timely request for a Departmental review of a proposed denial of a refund, the proposed denial is final and is not subject to further administrative or judicial review. A taxpayer whose proposed denial becomes final may not file another amended return or claim for refund to obtain the denied refund.

(b) Assessment. – If a taxpayer does not file a timely request for a Departmental review of a proposed assessment, the proposed assessment is final and is not subject to further administrative or judicial review. Upon payment of the tax, the taxpayer may request a refund of the tax.

Before the Department collects a proposed assessment that becomes final when the taxpayer does not file a timely request for a Departmental review, the Department must send the taxpayer a notice of collection. A notice of collection must contain the following information:

(1) A statement that the proposed assessment is final and collectible.

(2) The amount of tax, interest, and penalties payable by the taxpayer.

(3) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options. (2007-491, s. 1.)

§ 105-241.13. Action on request for review.

(a) Action on Request. – If a taxpayer files a timely request for a Departmental review of a proposed denial of a refund or a proposed assessment, the Department must conduct a review of the proposed denial or proposed assessment and do one or more of the following:

(1) Grant the refund or remove the assessment.

(2) Adjust the amount of tax due or refund owed.

(3) Request additional information from the taxpayer concerning the requested refund or proposed assessment. If a taxpayer makes no response to the Department's request for additional information by the requested response date, the Department must reissue the request. The Department must give a taxpayer at least 30 days to respond to a request for additional information and to respond to the reissuance of a request for additional information. If a taxpayer makes no response to the reissuance of the request for additional information by the requested response date, the refund or assessment is subject to the provisions of G.S. 105-241.13A.

(a1) Payment by Taxpayer. – If a taxpayer timely requests a Departmental review of a proposed assessment and thereafter pays the amount due or the amount due as adjusted by the Department, the Department may accept payment and take no further action on the request for Departmental review, unless the taxpayer states in writing that the taxpayer wishes to continue the Departmental review. If the review is not continued, the taxpayer may request a refund of taxes paid pursuant to G.S. 105-241.7(b).

(b) Conference. – When the Department and the taxpayer agree that an action taken under subsection (a) or (a1) of this section resolves the taxpayer's objection to the Department's proposed denial of a refund or a proposed assessment, the Department does not need to take further action on the request for review. When an action taken under subsection (a) or (a1) of this section does not resolve the taxpayer's objection to the Department's proposed denial of a refund or a proposed assessment, the Department must schedule a conference with the taxpayer. The Department must set the time and place for the conference, which may include a conference by telephone, and must send the taxpayer notice of the designated time and place. The Department must send the notice at least 30 days before the date of the conference or, if the Department and the taxpayer agree, within a shorter period.

The conference is an informal proceeding at which the taxpayer and the Department must attempt to resolve the case. Testimony under oath is not taken, and the rules of evidence do not apply. A taxpayer may designate a representative to act on the taxpayer's behalf. The taxpayer may present any objections to the proposed denial of refund or proposed assessment at the conference and is not limited by the explanation set forth in the taxpayer's request for review.

(c) After Conference. – One of the following must occur after the Department conducts a conference on a proposed denial of a refund or a proposed assessment:

(1) The Department and the taxpayer agree on a resolution.

(2) The Department and the taxpayer agree that additional time is needed to resolve the taxpayer's objection to the proposed denial of the refund or proposed assessment.

(3) The Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed denial of the refund or proposed assessment. If a taxpayer fails to attend a scheduled conference on the proposed denial of a refund or a proposed assessment without prior notice to the Department, the Department and the taxpayer are considered to be unable to resolve the taxpayer's objection. (2007-491, s. 1; 2017-204, s. 4.1(d).)

§ 105-241.13A. Taxpayer inaction.

(a) Consequence of Inaction. – Inaction by a taxpayer after timely filing a request for review shall result in the proposed denial of a refund or the proposed assessment becoming final as provided in this section. As used in this section, "inaction" means that the taxpayer made no response to the Department's initial request for additional information or to the reissuance of the request by the requested response date as provided under G.S. 105-241.13(a). A partial response, a request for additional time, or any other contact by the taxpayer with the Department does not constitute inaction under this section. The

Department must send the taxpayer a notice of inaction stating that the proposed denial of a refund or the proposed assessment becomes final 10 days from the date of the notice unless the taxpayer responds to the Department. A proposed denial of a refund or a proposed assessment that becomes final is not subject to further administrative or judicial review. A taxpayer may not file another amended return or claim for refund to obtain the denied refund. Upon payment of the tax, the taxpayer may request a refund of the tax.

(b) Notice of Collection. – Before the Department collects a proposed assessment that becomes final under this section, the Department must send the taxpayer a notice of collection containing the information required under G.S. 105-241.12.

(c) Determining Timely Response. – The provisions of G.S. 105-241.11(b) apply for purposes of determining whether a taxpayer has timely responded to the Department as required under this section. (2017-204, s. 4.1(c).)

§ 105-241.14. Final determination after Departmental review.

(a) Refund. – If a taxpayer files a timely request for a Departmental review of a proposed denial of a refund and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed denial, the Department must send the taxpayer a notice of final determination concerning the refund. The notice of final determination must state the basis for the determination and inform the taxpayer of the procedure for contesting the determination. The statement of the basis for the determination does not limit the Department from changing the basis.

(b) Assessment. – If a taxpayer files a timely request for a Departmental review of a proposed assessment and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed assessment, the Department must send the taxpayer a notice of final determination concerning the assessment. A notice of final determination concerning an assessment must contain the following information:

(1) The basis for the determination. This information may be stated on the notice or be set out in a separate document. The statement of the basis for the determination does not limit the Department from changing the basis.
(2) The amount of tax, interest, and penalties payable by the taxpayer.
(3) The procedure the taxpayer must follow to contest the final determination.
(4) A statement that the amount payable stated on the notice is collectible by the Department unless the taxpayer contests the final determination.
(5) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options.

(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed assessment. (2007-491, s. 1; 2008-134, s. 6(a).)

§ 105-241.15. Contested case hearing on final determination.

(a) Contest Final Determination. – A taxpayer who disagrees with a notice of final determination issued by the Department may contest the determination by filing a petition for a contested case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes. A taxpayer may file a petition for a contested case hearing only if the taxpayer has exhausted the prehearing remedy. A taxpayer's prehearing remedy is exhausted when the Department issues a final determination after conducting a review and a conference.

(b) Contest Statute of Limitations. – A taxpayer who disagrees with a notice of denial issued by the Department pursuant to G.S. 105-241.7(c1) may contest the statute of limitations determination by filing a petition for a contested case hearing at the office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes on the sole issue of whether the statute of limitations bars the taxpayer's claim. A final decision by the administrative law judge regarding the statute of limitations is subject to judicial review under Article 4 of Chapter 150B of the General Statutes and under G.S. 105-241.16. In the event judicial review of the decision is not sought and the final decision is that the taxpayer's claim was not barred by the statute of limitations, then the administrative law judge must remand the matter to the Department for consideration of the substantive issues. In the event judicial review is sought and it is finally determined that the taxpayer's claim was not barred by the statute of limitations, then the matter shall be remanded to the Department for consideration of the substantive issues. Any remand shall be regarded as a new amended return or claim for refund timely filed within the statute of limitations under G.S. 105-241.7(c). (2007-491, s. 1; 2016-76, s. 2(b).)

§ 105-241.16. Judicial review of decision after contested case hearing.

A party aggrieved by the final decision in a contested case commenced at the Office of Administrative Hearings may seek judicial review of the decision in accordance with Article 4 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial review must be filed in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). Before filing a petition for judicial review, a taxpayer must pay the amount of tax, penalties, and interest the final decision states is due. A party may appeal a decision of the Business Court to the appellate division in accordance with G.S. 150B-52. (2007-491, s. 1; 2010-95, s. 9; 2017-204, s. 4.1(e).)

§ 105-241.17. Civil action challenging statute as unconstitutional.

A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the Superior Court of Wake County to determine the taxpayer's liability under that statute if all of the conditions in this section are met. In filing an action under this section, a taxpayer must follow the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). The conditions for filing a civil action are:

(1) The taxpayer exhausted the prehearing remedy by receiving a final determination after a review and a conference.

(2) The taxpayer commenced a contested case at the Office of Administrative Hearings.
(3) The Office of Administrative Hearings dismissed the contested case petition for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.
(4) The taxpayer has paid the amount of tax, penalties, and interest the final determination states is due.
(5) The civil action is filed within two years of the dismissal. (2007-491, s. 1.)

§ 105-241.18. Class actions.

(a) Authority. – A class action against the State for the refund of a tax paid may be maintained only on the grounds of an alleged unconstitutional statute and only if the requirements of Rule 23 of the North Carolina Rules of Civil Procedure and the requirements of this section are met. For purposes of this section, a class action commences upon the later of the following:

(1) The date a complaint is filed in accordance with G.S. 105-241.17 alleging the existence of a class pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.
(2) The date a complaint filed in accordance with G.S. 105-241.17 is amended to allege the existence of a class.

(b) Class. – To serve as a class representative of a class action brought under this section, a taxpayer must comply with all of the conditions in G.S. 105-241.17 and the taxpayer's claims must be typical of the claims of the class members. A taxpayer who is not a class representative is eligible to become a member of a class if the taxpayer could have filed a claim for refund under G.S. 105-241.7 as of the date the class action commenced or as of a subsequent date set by the court, whether or not the taxpayer actually filed a claim for refund as of that date. An eligible class member who is not a class representative and who indicates a desire to be included in the class in accordance with the procedure approved by the court under subsection (c) of this section is not required to follow the procedures in G.S. 105-241.11 through G.S. 105-241.17 for the administrative and judicial review of a request for refund or a proposed denial of a request for refund.

(c) Procedure. – To become a member of a class action brought under this section, an eligible taxpayer must affirmatively indicate a desire to be included in the class in response to a notice of the class action. If the court so orders, the Department must provide to a class representative a list of names and last known addresses of all taxpayers who are readily determinable by the Department and who are eligible to become a member of the class. The court must approve the content of a notice of a class action, the method for distributing the notice, and the procedure by which an eligible taxpayer affirmatively indicates a desire to be included in the class. The class representative must advance the costs of notifying eligible taxpayers of the class action.

(d) Statute of Limitations. – The statute of limitations for filing a claim for refund of tax paid due to an alleged unconstitutional statute is tolled for a taxpayer who is eligible to become a member of a class action. The tolling begins on the date the class action is commenced. For a taxpayer who does not join the class, the tolling ends when the taxpayer

does not affirmatively indicate a desire to be included in the class within the time and in accordance with the procedure approved by the court under subsection (c) of this section. For a taxpayer who joins the class, the tolling ends when a court enters any of the following in the class action:

(1) A final order denying certification of the class.
(2) A final order decertifying the class.
(3) A final order dismissing the class action without an adjudication on the merits.
(4) A final judgment on the merits.

(e) Effect on Nonparticipating Taxpayers. – A taxpayer who does not become a member of a class may file and prosecute a claim for refund, if the statute of limitations has not otherwise expired for filing the claim, or may contest a pending assessment in accordance with the procedures in G.S. 105-241.11 through G.S. 105-241.17. Except as otherwise provided in this subsection, the effect of an adjudication in a class action on a nonparticipating taxpayer's claim for refund or contest of an assessment is governed by the normal rules relating to claim preclusion and issue preclusion.

If a final judgment on the merits is entered in a class action in favor of the class, the following applies to an eligible taxpayer who did not become a member of the class:

(1) The taxpayer is not entitled to receive any monetary relief awarded to the class on account of taxes previously paid by the taxpayer.
(2) If the taxpayer has been assessed for failure to pay the tax at issue in the class action and the taxpayer has not paid the assessment, then the assessment is abated.
(3) The taxpayer is relieved of any future liability for the tax that is the subject of the class action. (2008-107, s. 28.28(b).)

§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.

The remedies in G.S. 105-241.11 through G.S. 105-241.18 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed. (2007-491, s. 1; 2008-107, s. 28.28(c).)

§ 105-241.20. Delivery of notice to the taxpayer.

(a) Scope. – This section applies to the following notices:

(1) A proposed denial of a refund.
(2) A proposed assessment.
(3) A notice of collection.
(4) A final determination.

(b) Method. – The Secretary must deliver a notice listed in subsection (a) of this section to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the notice is considered to have

been delivered on the date the taxpayer makes the affidavit, and any time limit affected by the notice is extended to the date the taxpayer makes the affidavit. (2007-491, s. 1.)

§ 105-241.21. Interest on taxes.

(a) Rate. – The interest rate set by the Secretary applies to interest that accrues on overpayments and assessments of tax. On or before June 1 and December 1 of each year, the Secretary must establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively. In determining the interest rate, the Secretary must give due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Code. If no new rate is established, the rate in effect during the preceding six-month period continues in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) Accrual on Underpayments. – Interest accrues on an underpayment of tax from the date set by statute for payment of the tax until the tax is paid. Interest accrues only on the principal of the tax and does not accrue on any penalty.

(c) Accrual on Refund. – Interest accrues on an overpayment of tax from the time set in the following subdivisions until the refund is paid.

(1) Franchise, income, and gross premiums. – Interest on an overpayment of a tax levied under Article 3 of this Chapter and payable on an annual basis or of a tax levied under Article 4 or 8B of this Chapter accrues from a date 45 days after the latest of the following dates:

a. The date the final return was filed.

b. The date the final return was due to be filed.

c. The date of the overpayment. The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

(2) All other taxes. – Interest on an overpayment of a tax that is not included in subdivision (1) of this subsection accrues from a date that is 90 days after the date the tax was paid.

(d) When Refund Is Paid. – A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed. A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund. (2007-491, s. 1.)

§ 105-241.22. Collection of tax.

The Department may collect a tax in the following circumstances:

(1) When a taxpayer files a return showing an amount due with the return and does not pay the amount shown due. This subdivision does not apply to a

consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter.

(2) When the Department sends a notice of collection after a taxpayer does not file a timely request for a Departmental review of a proposed assessment of tax or based upon taxpayer inaction in accordance with G.S. 105-241.13A.

(3) When a taxpayer and the Department agree on a settlement concerning the amount of tax due.

(4) When the Department sends a notice of final determination concerning an assessment of tax and the taxpayer does not file a timely petition for a contested case hearing on the assessment.

(5) When a final decision is issued on a proposed assessment of tax after a contested case hearing.

(6) When the Office of Administrative Hearings dismisses a petition for a contested case for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute. (2007-491, s. 1; 2008-134, s. 7(a); 2010-31, s. 31.10(c); 2017-204, s. 4.2.)

§ 105-241.23. Jeopardy assessment and collection.

(a) Action. – The Secretary may at any time within the statute of limitations immediately assess and collect any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment and collection are necessary in order to protect the interest of the State. In making a jeopardy collection, the Secretary may use any of the collection remedies in G.S. 105-242 and is not required to wait any period of time before using these remedies. Within 30 days after initiating a jeopardy collection, the Secretary must give the taxpayer the notice of proposed assessment required by G.S. 105-241.9.

(b) Review by Department. – Within five days after initiating a jeopardy collection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in initiating the jeopardy collection. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary must determine whether initiating the jeopardy collection was reasonable under all the circumstances and whether the amount assessed and collected was reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the request.

(c) Judicial Review. – Within 90 days after the earlier of the date a taxpayer received or should have received a determination of the Secretary concerning a jeopardy collection under subsection (b) of this section, the taxpayer may bring a civil action seeking review of the jeopardy collection. The taxpayer may bring the action in the Superior Court of Wake County or in the county in North Carolina in which the taxpayer resides. Within 20 days after the action is filed, the court must determine whether the initiation of the jeopardy collection was reasonable under the circumstances. If the court determines that an action of the Secretary was unreasonable or inappropriate, the court may order the Secretary to

take any action the court finds appropriate. If the taxpayer shows reasonable grounds why the 20-day limit on the court should be extended, the court may grant an extension of not more than 40 additional days. (2007-491, s. 1.)

§ 105-242. Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.

(a) Levy and Sale. – If a taxpayer does not pay a tax within 30 days after it is collectible under G.S. 105-241.22, the Secretary may take either of the following actions to collect the tax:

(1) Issue a warrant directing the sheriff of any county of the State to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant but not less than 60 days from the date of the warrant. The procedure for executions issued against property upon judgments of a court apply to executions under a warrant.

(2) Issue a warrant to any revenue officer or other employee of the Department charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property found within the State for the payment of the tax. Except as otherwise provided in this subdivision, the levy upon and sale of personal property by an officer or employee of the Department is subject to and must be conducted in accordance with the laws governing the sale of property levied upon under execution. The Secretary may sell the property levied upon in any county and may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, must be added to and collected in the same manner as taxes. The Secretary is not required to file a report of sale with the clerk of superior court, if the sale is otherwise publicly reported.

(b) Attachment and Garnishment. – Intangible property that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery. G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by any amount the taxpayer owes the garnishee.

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the amount of the debt. The Secretary may submit the information on a

quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the taxpayer and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of a taxpayer's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.

(c) Certificate of Tax Liability. – The Department may file a certificate of tax liability to collect a tax that is owed by a taxpayer and is collectible under G.S. 105-241.22. A certificate of tax liability must state the taxpayer's name and the type and amount of tax owed. If the taxpayer resides in this State or has property in this State, the Department must file the certificate of tax liability with the clerk of the superior court of a county in which the taxpayer resides or has property. If the taxpayer does not reside in this State or have property in this State, the Department must file the certificate of tax liability in Wake County.

The clerk of court must record a certificate of tax liability in the same manner as a judgment. A recorded certificate of tax liability is considered a judgment and is enforceable in the same manner as other judgments. The legal rate of interest set in G.S. 24-1 applies to the principal amount of tax stated on the certificate of tax liability. The tax stated on a certificate of tax liability is a lien on real and personal property from the date the certificate is recorded.

A certificate of tax liability is enforceable for a period of 10 years from the date it is recorded. If the certificate is not satisfied within this period, the remaining liability of the taxpayer is abated and the Department must cancel the certificate. An execution sale initiated before the end of the 10-year period may be completed after the end of this period, regardless of whether resales are required because of the posting of increased bids. The Secretary may accept tax payments made after a certificate has expired, regardless of whether any collection actions were taken before the certificate expired. A taxpayer may waive the 10-year period for enforcement of the certificate for either a definite or an indefinite time.

The 10-year period in which a certificate of tax liability is enforceable is tolled during the following periods:

(1) While the taxpayer is absent from the State. The period is tolled during the taxpayer's absence plus one year after the taxpayer returns.
(2) Upon the death of the taxpayer. The period is tolled while the taxpayer's estate is administered plus one year after the estate is closed.
(3) While an action is pending to set aside a conveyance made by the taxpayer as a fraudulent conveyance.
(4) While an insolvency proceeding against the taxpayer is pending.
(5) During the period of any statutory or judicial bar to the enforcement of the certificate.
(6) The period for which a taxpayer has waived the 10-year period.

(c1) Release of Lien. – The Secretary shall release the State tax lien on a taxpayer's property if the liability for which the lien attached has been satisfied. The Secretary may release the State tax lien on all or part of a taxpayer's property if one or more of the following findings is made:

(1) The liability for which the lien attached has become unenforceable due to lapse of time.

(2) The lien is creating an economic hardship due to the financial condition of the taxpayer.

(3) The fair market value of the property exceeds the tax liability and release of the lien on part of the property would not hinder collection of the liability.

(4) Release of the lien will probably facilitate, expedite, or enhance the State's chances for ultimately collecting a tax due the State.

If the Secretary of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed by the clerk of court or his deputy or assistant and shall be in substantially the following form: "The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This __ day of ___, ____

_____

Revenue Officer, N.C. Department of Revenue

WITNESS:

_____ 42 C.S.C."

The release shall be noted on the judgment docket only upon conditions prescribed by the Secretary and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(d) Remedies Cumulative. – The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) Exempt Property. – Only the following property is exempt from levy, attachment, and garnishment under this Article:

(1) The taxpayer's principal residence, unless the Secretary approves of the levy in writing or the Secretary finds that collection of the tax is in jeopardy.

(2) Tangible personal property that is exempt from federal levy as provided in section 6334 of the Code.

(3) Intangible personal property that is exempt from federal levy under section 6334 of the Code.

(4) Ninety percent (90%) of the taxpayer's salary or wages per month.

(f) Uneconomical Levy. – The Secretary shall not levy against any property if the Secretary estimates before levy that the expenses the Department would incur in levying against the property would exceed the fair market value of the property.

(g) Erroneous Lien. – A taxpayer may appeal to the Secretary after a certificate is filed under subsection (c) of this section if the taxpayer alleges an error in the filing of the lien. The Secretary shall make a determination of such an appeal as quickly as possible. If the Secretary finds that the filing of the certificate was erroneous, the Secretary shall withdraw the lien as quickly as possible by issuing a certificate of withdrawal. (1939, c. 158, s. 913; 1941, c. 50, s. 10; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1285; c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 368; 1963, c. 1169, s. 6; 1969, c. 1071, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 103, ss. 1, 2; c. 179, s. 5; 1979, 2nd Sess., c. 1085, s. 1; 1989, c. 37, s. 6; c. 580; 1991, c. 228, s. 1; 1991 (Reg. Sess., 1992), c. 1007, ss. 12, 13; 1993, c. 532, s. 5; 1997-121, s. 1; 1999-456, s. 59; 2003-349, s. 2; 2007-491, ss. 28, 29, 31; 2010-31, s. 31.8(h); 2014-3, s. 14.17.)

§ 105-242.1. Procedure for attachment and garnishment.

(a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment and garnishment. Before the Department attaches and garnishes intangible property in payment of a tax, the Department must send the garnishee a notice of garnishment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20 or, with the agreement of the garnishee, by electronic means. The notice must contain all of the following information, unless the notice is an electronic notice subject to subsection (a1) of this section:

(1) The taxpayer's name.
(2) The taxpayer's social security number or federal identification number.
(3) The amount of tax, interest, and penalties the taxpayer owes.
(4) An explanation of the liability of a garnishee for tax owed by a taxpayer.
(5) An explanation of the garnishee's responsibility concerning the notice.

(a1) Electronic Notice. – Before the Department sends an electronic notice of garnishment to a garnishee, the Department and the garnishee must have an agreement that establishes the protocol for transmitting the notice and provides the information required under subdivisions (4) and (5) of subsection (a) of this section. An electronic notice must contain the information required under subdivisions (1), (2), and (3) of subsection (a) of this section.

(b) Action. – A garnishee must comply with a notice of garnishment or file a written response to the notice within the time set in this subsection. A garnishee that is a financial institution must comply or file a response within 20 days after receiving a notice of garnishment. All other garnishees must comply or file a response within 30 days after receiving a notice of garnishment. A written response must explain why the garnishee is not subject to garnishment and attachment.

Upon receipt of a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on

the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

(c) Release. – A notice of garnishment sent to a financial institution is released when the financial institution complies with the notice. A notice of garnishment sent to all other garnishees is released when the Department sends the garnishee a notice of release. A notice of release must state the name and social security number or federal identification number of the taxpayer to whom the release applies.

(d) Financial Institution. – As used in this section, the term "financial institution" has the same meaning as in G.S. 53B-2. (2007-491, s. 30; 2010-31, s. 31.8(i).)

§ 105-242.2. Personal liability when certain taxes not paid.

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

(1) Business entity. – A corporation, a limited liability company, or a partnership, regardless of whether the entity is suspended under G.S. 105-230 or is dissolved under Article 14 of Chapter 55 of the General Statutes or under Article 6 of Chapter 57D of the General Statutes.

(2) Responsible person. – Any of the following:

a. The president, treasurer, or chief financial officer of a corporation.

b. A manager of a limited liability company or a partnership.

c. An officer of a corporation, a member or company official of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.

d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

(b) Responsible Person. – Each responsible person in a business entity is personally and individually liable for the principal amount of taxes that are owed by the business entity and are listed in this subsection. If a business entity does not pay the amount it owes after the amount becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the amount by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. This subsection applies to the following:

(1) All sales and use taxes collected by the business entity upon its taxable transactions.

(2) All sales and use taxes due upon taxable transactions of the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld by the business entity.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) Distributions. – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who

allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this subsection by sending the individual a notice of proposed assessment in accordance with G.S. 105-241.9.

(e) Statute of Limitations. – The period of limitations for assessing a responsible person for unpaid taxes under this section expires the later of (i) one year after the expiration of the period of limitations for assessing the business entity or (ii) one year after a tax becomes collectible from the business entity under G.S. 105-241.22(3), (4), (5), or (6). (1939, c. 158, s. 923; 1941, c. 50, s. 10; 1955, c. 1350, s. 23; 1973, c. 476, s. 193; c. 1287, s. 13; 1983, c. 220, s. 1; 1991, c. 690, s. 7; 1991 (Reg. Sess., 1992), c. 1007, s. 15; 1995, c. 390, s. 15; 1995 (Reg. Sess., 1996), c. 647, s. 52; 1997-6, s. 9; 1998-212, s. 29A.14(p); 1999-337, s. 34; 2007-491, s. 34; 2008-134, s. 10(a); 2013-414, s. 56(a); 2014-3, s. 14.18; 2016-5, s. 5.1(a); 2018-5, s. 38.10(b).)

§ 105-243. Taxes recoverable by action.

When requested by the Secretary, the Attorney General must bring an action to recover the amount of tax that is due from a taxpayer and is collectible under G.S. 105-241.22. In the action, the taxpayer may not challenge the liability for the tax. A judgment in the action has the same priority as a tax lien. The judgment is not subject to a claim for a homestead exemption. The action must be brought in one of the following:

(1) The Superior Court of Wake County.
(2) The taxpayer's county of residence.
(3) A county where the taxpayer owns real property.
(4) The county in which the taxpayer has its principal place of business.
(5) A court of competent jurisdiction of another state. (1939, c. 158, s. 914; 1973, c. 476, s. 193; 2007-491, s. 32.)

§ 105-243.1. Collection of tax debts.

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

(1) Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after it becomes collectible under G.S. 105-241.22. The term does not include a tax debt for which the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the tax debt became collectible, if the taxpayer has not failed to make any payments due under the installment agreement.
(2) Tax debt. – The total amount of tax, penalty, and interest collectible under G.S. 105-241.22.

(b) Outsourcing. – The Secretary may contract for the collection of tax debts owed by nonresidents and foreign entities. At least 30 days before the Department submits a tax debt to a contractor for collection, the Department must notify the taxpayer by mail that the debt may be submitted for collection if payment is not received within 30 days after the notice was mailed.

(b1) [Outsourcing Limitation. –] In determining the liability of any person for a tax, the Secretary may not employ an agent who is compensated in whole or in part by the State

for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the person.

(c) Secrecy. – A contract for the collection of tax debts is conditioned on compliance with G.S. 105-259. If a contractor violates G.S. 105-259, the contract is terminated, and the Secretary must notify the contractor of the termination. A contractor whose contract is terminated for violation of G.S. 105-259 is not eligible for an award of another contract under this section for a period of five years from the termination. These sanctions are in addition to the criminal penalties set out in G.S. 105-259.

(d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice required by this subsection is mailed to the taxpayer. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed if the tax debt is not paid in full within 30 days after the date the fee notice was mailed to the taxpayer. The Department may not mail the fee notice earlier than 60 days after the tax debt becomes collectible under G.S. 105-241.22. The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.

The amount of the collection assistance fee is twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue.

(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting and reducing the incidence of overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting and reducing the incidence of overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the purposes listed in this subsection. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to the purposes listed in this subsection from costs allocab
le to other purposes and must demonstrate that none of the fee proceeds are used for any other purpose.

The Department may apply the fee proceeds for the following purposes:

(1) To pay (i) contractors for collecting overdue tax debts under subsection (b) of this section and (ii) auditors responsible for identifying overdue tax debts.

(2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.

(3) To pay for taxpayer locator services, not to exceed three hundred fifty thousand dollars ($350,000) a year.

(4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts, not to exceed seven hundred fifty thousand dollars ($750,000) a year.

(5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.

(6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts.

(7) To pay the direct and indirect expenses of information technology upgrades to the Department of Revenue computer systems that are intended to upgrade Department of Revenue capabilities to (i) allow for electronic filing of returns by taxpayers and the electronic issuance of refunds by the Department for all remaining tax schedules and (ii) accomplish other mission-critical information technology tasks of the Department as approved by the Office of State Budget and Management in consultation with the State CIO.

(f) Reports. – The report of Department activities required by G.S. 105-256 contains information on the Department's efforts to collect tax debts and its use of the proceeds of the collection assistance fee. (2001-380, ss. 2, 8; 2002-126, s. 22.2; 2003-349, s. 3; 2004-124, ss. 23.2(a), 23.3(c); 2004-170, s. 22.5; 2005-276, ss. 22.1(a), 22.1(b), 22.6(a); 2006-66, ss. 19.2, 19.3(a); 2007-323, s. 6.9(a); 2007-491, s. 33; 2012-152, s. 1; 2012-194, s. 61.5(b); 2014-3, s. 10.1(d); 2014-100, s. 26.1; 2015-109, s. 1; 2015-241, s. 28.2.)

§ 105-244: Repealed by Session Laws 1998-212, s. 29A.14(o).

§ 105-244.1. Cancellation of certain assessments.

The Secretary of Revenue is hereby authorized, empowered and directed to cancel and abate all assessments made after October 16, 1940, for or on account of any tax owing to the State of North Carolina and which is payable to the Department of Revenue against any person who was killed while a member of the Armed Forces of the United States or who has a service connected disability as a result of which the United States is paying him disability compensation. This provision shall apply only to assessments made after October 16, 1940, for taxes which were due prior to the time the taxpayer was inducted into the Armed Forces of the United States. If any such assessment is or has been paid, the Secretary of Revenue may refund the amount paid but shall not add thereto any interest. (1949, c. 392, s. 6; 1973, c. 476, s. 193; 2011-183, s. 73.)

§ 105-244.2: Expired pursuant to its own terms, effective January 1, 2010.

§ 105-244.3. Sales tax base expansion protection act.

(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

(1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or digital property sold at retail.

(2) A person failed to properly classify themselves as a retailer in retail trade for the period beginning March 1, 2016, and ending December 31, 2016, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.

(3) A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.

(4) A person failed to collect sales tax on the sales price of a service contract for one or more components, systems, or accessories for a motor vehicle on or after March 1, 2016, and prior to January 1, 2017, where the contract was sold by a motor vehicle dealer, a motor vehicle service agreement company, or a motor vehicle dealer on behalf of a motor vehicle service agreement company.

(5) A person failed to collect sales tax on the retail sale of a service contract for tangible personal property that becomes a part of or is affixed to real property.

(6) A person failed to collect sales tax on the retail sale of a service contract for a pool, a fish tank, or similar aquatic feature on or after January 1, 2017, and prior to January 1, 2019, provided the person paid tax on any purchases used to fulfill the service contract.

(7) A person failed to collect sales tax on the sales price of or the gross receipts derived from the retail sale of a home warranty on or after January 1, 2017, and prior to January 1, 2019, provided the warranty includes coverage for real property.

(8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed contract.

(8a) A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.

(8b) A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.

(9) A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.

(10) A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, and digital property.

(b) Limitations. – This section does not prohibit the following assessments:

(1) The assessment of tax collected by a person and not remitted to the Department.

(2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.

(3) The assessment of use tax on purchases as provided in subsection (a) of this section. (2017-204, s. 2.8(c); 2018-5, s. 38.5(q).)

§ 105-244.4. Reduction of certain sales tax assessments.

(a) Reduction – The Secretary may reduce an assessment against a taxpayer who requests relief for State and local sales and use taxes in the amount as provided in this section and waive any penalties imposed as part of the assessment when the assessment is the result of an audit of the taxpayer by the Department and all of the following apply:

(1) The taxpayer remitted to the Department all of the sales and use taxes it collected during the audit period.

(2) The taxpayer had not been informed by the Department in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment, as reflected in the written audit comments of the prior audit.

(3) The taxpayer had not requested and received from the Department a private letter ruling advising to collect sales and use taxes in the circumstance that is the basis of the assessment.

(4) The assessment is based on the incorrect application of one or both of the following areas of the sales and use tax statutes:

a. The failure to collect sales tax on separately stated linen charges where the linens are furnished by a facilitator, rental agent, or other person and the charges are part of the gross receipts derived from the rental of the accommodation taxed in accordance with G.S. 105-164.4F.

b. The failure to pay sales or use tax on the rental of linens used by a facilitator, rental agent, or other person in providing the rental of an accommodation taxed in accordance with G.S. 105-164.4F where the facilitator, rental agent, or other person issued a certificate of exemption or the required data elements per G.S. 105-164.28 to the lessor.

(5) The taxpayer meets one of the following:

a. The taxpayer received a proposed assessment dated on or before August 15, 2017, did not file a request for review, paid the tax due, and files a written request with the Secretary on or before December 29, 2017, to request the amount of sales or use taxes be reduced as provided in this section citing the specific reasons therefor.

b. The taxpayer received a proposed assessment dated on or before September 30, 2017, timely filed a request for review, and files a written request with the Secretary on or before December 29, 2017, to request the amount of sales or use taxes be reduced as provided in this section citing the specific reasons therefor. The Department does not need to take further action on the taxpayer's request for review unless the taxpayer states in writing, when filing a request for reduction under this section, that the reduction does not resolve the taxpayer's objection to the proposed assessment and that the taxpayer wishes to continue the Departmental review.

c. The taxpayer receives a proposed assessment after September 30, 2017, and timely files a request for review as provided in G.S. 105-241.11 and files a written request with the Secretary no later than 45 days from the date of the notice of the proposed assessment to request the amount of sales or use taxes be reduced as provided in this section citing the specific reasons therefor.

(b) Amount. – A sales and use tax assessment against a taxpayer may be reduced by ninety percent (90%) of the total amount of sales and use tax assessed. The Secretary may also waive all penalties that were imposed as part of the assessment. A reduction of an assessment under this section and the waiver of penalties imposed as part of the assessment apply only to the amount of the assessment attributable to the incorrect application of one or both of the areas of the law listed in subdivision (a)(4) of this section.

(c) Application. – This section applies to the following for a tax period ending prior to January 1, 2018:

(1) A proposed assessment or portion of a proposed assessment.
(2) An assessment that becomes collectible under G.S. 105-241.22.
(3) A pending request for review case.
(4) This section does not authorize a refund for sales or use taxes that were originally collected and remitted to the Department.

(d) Expiration. – This section is not applicable to an assessment attributable to the incorrect application of one or both areas listed in subdivision (a)(4) of this section for a period beginning on or after January 1, 2018. (2017-204, s. 2.8A; 2017-212, s. 7.1(a).)

§ 105-245. Failure of sheriff to execute order.

If any sheriff of this State shall willfully fail, refuse, or neglect to execute any order directed to him by the Secretary of Revenue and within the time provided in this Subchapter, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer. (1939, c. 158, s. 916; 1973, c. 476, s. 193.)

§ 105-246. Actions, when tried.

All actions or processes brought in any of the superior courts of this State, under provisions of this Subchapter, shall have precedence over any other civil causes pending in such courts, and the courts shall always be deemed open for trial of any such action or proceeding brought therein. (1939, c. 158, s. 917.)

§ 105-247. Municipalities not to levy income and inheritance tax.

No city, town, township, or county shall levy any tax on income or inheritance. (1939, c. 158, s. 918.)

§ 105-248. Purpose of State taxes.

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, the interest on the debt of the State, the public schools, and other specific appropriations made by law, and shall

be collected and paid into the General Fund. (1939, c. 158, s. 919; 1981, c. 3; 1993 (Reg. Sess., 1994), c. 745, s. 17.)

§ 105-248.1: Repealed by Session Laws 2007-527, s. 32, effective August 31, 2007.

§ 105-249: Repealed by Session Laws 1998-95, s. 27.

§ 105-249.1: Repealed by Session Laws 1998-95, s. 28.

§ 105-249.2. Due date extended and penalties waived for certain military personnel or persons affected by a presidentially declared disaster.

(a) Combat. – The Secretary may not assess interest or a penalty against a taxpayer for any period that is disregarded under section 7508 of the Code in determining the taxpayer's liability for a federal tax. A taxpayer is granted an extension of time to file a return or take another action concerning a State tax for any period during which the Secretary may not assess interest or a penalty under this section.

(b) Disaster. – The penalties in G.S. 105-236(a)(2), (3), and (4) may not be assessed for any period in which the time for filing a federal return or report or for paying a federal tax is extended under section 7508A of the Code because of a presidentially declared disaster. For the purpose of this section, "presidentially declared disaster" has the same meaning as in section 1033(h)(3) of the Code. (1967, c. 706, s. 1; 1991, c. 439, s. 1; 1991 (Reg. Sess., 1992), c. 922, s. 10; 2001-87, s. 1; 2001-414, s. 24; 2006-162, s. 18; 2008-187, s. 16.)

§ 105-249.3: Repealed by Session Laws 1998-98, s. 19.

§ 105-250. Law applicable to foreign corporations.

All foreign corporations, and the officers and agents thereof, doing business in this State, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this State, and shall have no other or greater powers. (1939, c. 158, s. 920.)

§ 105-250.1. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209.

§ 105-251. Information required of taxpayer and corrections based on information.

(a) Scope of Information. – A taxpayer must give information to the Secretary when the Secretary requests the information. The Secretary may request a taxpayer to provide only the following kinds of information on a return, a report, or otherwise:

(1) Information that identifies the taxpayer.
(2) Information needed to determine the liability of the taxpayer for a tax.
(3) Information needed to determine whether an item is subject to a tax.
(4) Information that enables the Secretary to collect a tax.

(5) Other information the law requires a taxpayer to provide or the Secretary needs to perform a duty a law requires the Secretary to perform.

(b) Correction of Liability. – When a taxpayer provides information to the Secretary within the statute of limitations and the information establishes that an assessment against the taxpayer is incorrect or that the taxpayer is allowed a refund, the Secretary must adjust the assessment or issue the refund in accordance with the information. This action is a correction of an error by the Department or by the taxpayer and is not part of the process for the administrative or judicial review of a proposed assessment or a claim for refund. (1939, c. 158, s. 921; 1973, c. 476, s. 193; 1993 (Reg. Sess., 1994), c. 661, s. 2; 2008-134, s. 71.)

§ 105-251.1: Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 14.

§ 105-251.2. Compliance informational returns.

(a) Occupational Licensing Board. – An occupational licensing board must give information to the Secretary when the Secretary requests the information. The Secretary may not request the information more than one time per calendar year. The Secretary may request the board to provide on a return, a report, or otherwise, a licensee's name, license number, tax identification number, business address, and any other information pertaining to the licensee in possession of the board that the Secretary deems necessary to determine the licensee's compliance with this Chapter. For purposes of this subsection, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1.

(b) Alcohol Vendor. – An alcohol vendor must give information to the Secretary when the Secretary requests the information. The Secretary may not request the information more than one time per calendar year. The Secretary may request the alcohol vendor to provide on a return, a report, or otherwise, for a permittee to which the alcohol vendor provides alcohol, a permittee's name, license number, and business address and any other information pertaining to the permittee in possession of the alcohol vendor that the Secretary deems necessary to determine the permittee's compliance with this Chapter. This subsection applies to the following alcohol vendors:

(1) An ABC store in the ABC system, as defined in G.S. 18B-101.
(2) A wine wholesaler, as defined in G.S. 18B-1201.
(3) A wholesaler, as defined in G.S. 18B-1301.
(4) The holder of an unfortified winery permit, a fortified winery permit, a brewery permit, or a distillery permit under G.S. 18B-1100.

(c) Payment Settlement Entity. – For any year in which a payment settlement entity is required to make a return pursuant to section 6050W of the Code, the entity shall submit the information in the return to the Secretary at the time the return is made. For purposes of this subsection, the term "payment settlement entity" has the same meaning as provided in section 6050W of the Code.

(d) Electronic Format. – All reports submitted to the Department of Revenue under this section shall be in an electronic format as prescribed by the Secretary. (2015-259, s. 7.3(a); 2017-204, s. 3.2; 2018-5, s. 38.10(o).)

§ 105-252. Returns required.

A person who receives from the Secretary any form requiring information shall fill the form out properly and answer each question fully and correctly. If unable to answer a question, the person shall explain why in writing. The person shall return the form to the Secretary at the time and place required by the Secretary. The person shall also furnish an oath or affirmation verifying the return; the oath or affirmation shall be in the form required by the Secretary. (1939, c. 158, s. 922; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 930, s. 5.)

§ 105-253: Recodified as G.S. 105-242.2 by Session Laws 2008-134, s. 10(a), effective July 1, 2008, and applicable to taxes that become collectible on or after that date.

§ 105-254. Secretary to furnish forms.

The Secretary shall prepare forms suitable for carrying out the duties delegated to the Secretary. Upon request, the Secretary shall provide forms to any person subject to the laws administered by the Secretary. Failure to receive or secure a form does not relieve a person from a duty to file a return or a report. (1939, c. 158, s. 924; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 930, s. 6.)

§ 105-254.1. Identification of veterans on income tax form D-400.

(a) The Secretary shall provide appropriate space and instructions on the individual income tax form D-400 for an individual to voluntarily indicate whether or not the filing individual is a veteran and, on a joint return, whether or not the individual's spouse is a veteran.

(b) Using the information reported pursuant to this section, the Secretary shall compile summary information on an aggregate basis about the number of veterans filing tax returns in this State and shall annually provide that information to the Department of Military and Veterans Affairs no later than January 15 of each year. Information specific to individual employers or employees shall remain confidential in accordance with G.S. 105-259.

(c) As used in this section, the term "veteran" shall mean a person as defined in G.S. 143B-1213(3)b. (2016-112, s. 1.)

§ 105-255. Secretary of Revenue to keep records.

The Secretary of Revenue shall keep books of account and records of collections of taxes as may be prescribed by the Director of the Budget; shall keep an assessment roll for the taxes levied, assessed, and collected under this Subchapter, showing in same the name of each taxpayer, the amount of tax assessed against each, when assessed, the increase or decrease in such assessment; the penalties imposed and collected, and the total tax paid; and shall make monthly reports to the Director of the Budget and to the Auditor and/or State Treasurer of all collections of taxes on such forms as prescribed by the Director of the Budget. (1939, c. 158, s. 925; 1973, c. 476, s. 193.)

§ 105-256. Publications prepared by Secretary of Revenue; report on fraud prevention progress.

(a) Publications. – The Secretary shall prepare and publish the following:

(1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, geographic distribution of taxes, and other facts considered pertinent and valuable.

(2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter, other than a provision in Subchapter II, and gives an estimate of the amount by which revenue is reduced by each tax expenditure. A "tax expenditure" is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State. An estimate of the amount by which revenue is reduced by a tax expenditure may be stated as ranging between two amounts if the Department does not have sufficient data to make a more specific estimate.

(2a) By May 1 of each year, an economic incentives report that contains information on tax credits and tax refunds, itemized by credit or refund and by taxpayer, for the previous calendar year.

(3) As often as required, a report that is not listed in this subsection but is required by another law.

(4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.

(5) At least once a year, a statement of the taxpayer's bill of rights, which sets forth in simple and nontechnical terms the following:

a. The taxpayer's right to have the taxpayer's tax information kept confidential.

b. The rights of a taxpayer and the obligations of the Department during an audit.

c. The procedure for a taxpayer to appeal an adverse decision of the Department at each level of determination.

d. The procedure for a taxpayer to claim a refund for an alleged overpayment.

e. The procedure for a taxpayer to request information, assistance, and interpretations or to make complaints.

f. Penalties and interest that may apply and the basis for requesting waiver of a penalty.

g. The procedures the Department may use to enforce the collection of a tax, including assessment, jeopardy assessment, enforcement of liens, and garnishment and attachment.

(6) On an annual basis, a report on the quality of services provided to taxpayers through the Taxpayer Assistance Call Center, walk-in assistance, and taxpayer education. The report must be submitted to the Joint Legislative Commission on Governmental Operations.

(7) Repealed by Session Laws 2011-330, s. 35, effective June 27, 2011.

(8) By January 1 and July 1 of each year, a semiannual report on the Department's activities listed in this subdivision. The report must be submitted to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee.

a. Its efforts to increase compliance with the tax laws. The report must describe the Department's existing initiatives in this area as of July 1, 2006, and must estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative. The report must describe any new initiative implemented since July 1, 2006, and estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative.

b. Its efforts to identify and address fraud and other abuses of the voluntary tax compliance system that result in unreported and underreported tax. The report must describe the Department's long-term plan for achieving greater voluntary compliance and must summarize the steps taken since the last report and their results.

c. Its efforts to collect tax debts. The report must include a breakdown of the amount and age of tax debts collected through warning letters and by other means, must itemize collections by type of tax, must describe the Department's long-term collection plan, and must summarize the steps taken since the last report and their results.

d. Its use of the proceeds of the collection assistance fee imposed by G.S. 105-243.1.

(9) Repealed by Session Laws 2013-416, s. 18(a), effective August 23, 2013.

(a1) [Fraud Prevention Progress Reports. –] Beginning March 1, 2016, and every six months thereafter, the Department of Revenue and the Government Data Analytics Center must make written progress reports to the Revenue Laws Study Committee on the following:

(1) Prevention or reduction of the occurrence of stolen identities and refund fraud.

(2) Elimination of fraudulent returns.

(3) Tax compliance by business professionals and alcohol vendors.

(4) Coordination of efforts between the Department of Revenue and the Government Data Analytics Center to identify and integrate into the Department's operations and procedures the most effective and accurate processes and scalable tools available to reduce refund fraud, payment of fraudulent returns, and business tax compliance.

(b) Information. – The Secretary may require a unit of State or local government to furnish the Secretary statistical information the Secretary needs to prepare a report under this section. Upon request of the Secretary, a unit of government shall submit statistical information on one or more forms provided by the Secretary.

(c) Distribution. – The Secretary shall distribute reports prepared by the Secretary as follows without charge:

(1) Five copies to the Division of State Library of the Department of Natural and Cultural Resources, as required by G.S. 125-11.7.

(2) Five copies to the Legislative Services Commission for the use of the General Assembly.

(3) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice is furnished under G.S. 7A-343.1.

(4) One copy of the tax expenditure report to each member of the General Assembly and, upon request, one copy of any other report to each member of the General Assembly.

(5) One copy of the taxpayer's bill of rights to each taxpayer the Department contacts regarding determination or collection of a tax, other than by providing a tax form.

(6) Upon request, one copy of the taxpayer's bill of rights to each taxpayer.

The Secretary may charge a person not listed in this subsection a fee for a report prepared by the Secretary in an amount that covers publication or copying costs and mailing costs.

(d) Other Requirements. – The following requirements apply to the Secretary:

(1) Repealed by Session Laws 2006-6, s. 10, effective July 1, 2007.

(2) Escheats. – G.S. 116B-60(g) requires the Secretary to furnish information to the Escheat Fund on October 1 of each year.

(e) Repealed by Session Laws 2004-124, s. 23.3(b), effective July 1, 2004. (1939, c. 158, s. 926; 1955, c. 1350, s. 8; 1973, c. 476, s. 193; 1991, c. 10, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 16; 1993, c. 433, s. 1; c. 532, s. 6; 2001-414, ss. 25, 26; 2002-87, s. 8; 2002-126, s. 22.5; 2004-124, s. 23.3(b); 2006-6, s. 10; 2006-66, s. 19.3(b); 2007-491, ss. 35, 36; 2010-166, s. 1.21; 2011-330, ss. 33(a), 35; 2013-414, s. 18(a); 2015-241, s. 14.30(s); 2015-259, s. 7.3(b).)

§ 105-256.1. Corporate annual report.

A corporation that files its annual report with the Secretary must pay the amount provided in G.S. 55-1-22 when it files the report. Amounts collected under this section shall be credited to the General Fund as tax revenue. The Secretary must transmit an annual report filed with the Secretary in accordance with G.S. 55-16-22 to the Secretary of State. (1997-475, s. 6.10.)

§ 105-257. Department may charge fee for report or other document.

The Secretary of Revenue may charge a fee for a report or another document in an amount that covers copying or publication costs and mailing costs. (1933, c. 88, s. 2; 1955, c. 1350, s. 9; 1973, c. 476, s. 193; 1991, c. 10, s. 2.)

§ 105-258. Powers of Secretary of Revenue; who may sign and verify legal documents; who may serve civil papers.

(a) Secretary May Examine Data and Summon Persons. – The Secretary of Revenue is authorized to do any of the following for the purpose of ascertaining the correctness of any return, filing a return where none has been filed, or determining the liability of any person for a tax, or collecting any tax:

(1) Examine, personally, or by an agent designated by him, any books, papers, records, or other data that may be relevant or material to the inquiry.

(2) Summon any of the following persons to appear at a time and place named in the summons, to produce such books, papers, records, or other data, and to give such testimony under oath as may be relevant or material to the inquiry:

a. Any person liable for the tax or required to perform the act, or any officer or employee of such person.

b. Any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises.

(3) Administer oaths to the persons listed in this subsection.

(4) Apply to the Superior Court of Wake County for an order requiring any person who refuses to obey the summons or to give testimony when summoned. Failure to comply with the court order shall be punished as for contempt.

(b) Department Employees May Sign and Verify Legal Documents. – In a matter to which the Secretary of Revenue is a party or in which the Secretary has an interest, all legal documents may be signed and verified on behalf of the Secretary by (i) a Deputy or Assistant Secretary; (ii) any director or assistant director of any division of the Department of Revenue; or (iii) any other agent or employee of the Department so authorized by the Secretary of Revenue.

(c) Department Employees May Serve Civil Papers. – In a civil matter to which the Secretary of Revenue is a party or in which the Secretary has an interest, any agent or employee of the Department of Revenue may serve summonses and other legal documents lawfully issued when so authorized by the Secretary of Revenue. (1939, c. 158, s. 927; 1943, c. 400, s. 9; 1955, c. 435; 1959, c. 1259, s. 8A; 1973, c. 476, s. 193; 1987 (Reg. Sess., 1988), c. 1044, s. 1; 1991, c. 157, s. 1; 2007-527, s. 15; 2013-414, s. 1(i).)

§ 105-258.1. Taxpayer interviews.

(a) Scope. – This section applies to in-person interviews between a taxpayer and an officer or employee of the Department relating to the determination or collection of a tax, other than an in-person interview concerning any of the following:

(1) A criminal investigation.

(2) The determination or collection of a tax imposed by Article 2D of this Chapter.

(3) Repealed by Session Laws 2007-491, s. 37, effective January 1, 2008.

(4) A jeopardy assessment and collection.

(b) Recording of Interview. – The Department shall allow a taxpayer to make an audio recording of an interview at the taxpayer's expense and using the taxpayer's equipment. The Department may make an audio recording of an interview at its own expense and using its own equipment. The Department shall, upon request of the taxpayer, provide the taxpayer a transcript of an interview recorded by the Department; the Department may charge the taxpayer for the cost of the requested transcription and reproduction of the transcript.

(c) Disclosure of Procedure. – At or before an initial interview relating to the determination of a tax, the Department shall provide the taxpayer a written explanation of the audit process and the taxpayer's rights in the process. At or before an initial interview

relating to the collection of a tax, the Department shall provide the taxpayer a written explanation of the collection process and the taxpayer's rights in the process.

(d) Right of Consultation. – A taxpayer may authorize a person to represent the taxpayer in an interview if the person has a written power of attorney executed by the taxpayer. The Department may not require a taxpayer to accompany the taxpayer's representative to the interview unless the Secretary has summoned the taxpayer pursuant to G.S. 105-258.

(e) Suspension of Interview. – The Department shall suspend an interview relating to the determination of a tax if the taxpayer is not accompanied by a representative and, at any time during the interview, expresses the desire to consult with another person. (1993, c. 532, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 18; 2007-491, s. 37.)

§ 105-258.2. Taxpayer conversations.

(a) Scope. – This section applies to a conversation that is conducted by telephone or in person, is between a taxpayer and an employee of the Department, and occurs at an office of the Department if the conversation is in person. It does not apply to a conversation that occurs at a presentation, a conference, or another forum.

(b) Documentation. – The Secretary must document advice given to a taxpayer in a conversation with that taxpayer when the taxpayer gives the Secretary the taxpayer's identifying information, asks the Secretary about the application of a tax to the taxpayer in specific circumstances, and requests that the Secretary document the advice in the taxpayer's records. The documentation may be an entry in the account record of the taxpayer or by another method determined by the Secretary. The documentation must set out the date of the conversation, the question asked, and the advice given.

(c) Sales Tax Inquiries. – The Secretary must document advice given in a conversation with a person who is not registered as a retailer or a wholesale merchant under Article 5 of this Chapter when the person gives the Secretary the person's name and address, describes a business in which the person is engaged, asks if the person is required to be registered under Article 5 of this Chapter, and requests that the Secretary document the advice. The Secretary must keep a record of the person's inquiry that sets out the date of the conversation, the person making the inquiry, the business described in the conversation, and the advice given. (2008-107, s. 28.16(c), (d).)

§ 105-259. Secrecy required of officials; penalty for violation.

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

(1) Employee or officer. – The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. – Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) the amount of tax refunds paid to a governmental entity listed in G.S. 105-164.14(c) or to a State agency.

(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

(1) To comply with a court order, an administrative law judge's order in a contested tax case, or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) To exchange the following types of information with a tax official of another jurisdiction if the laws of the other jurisdiction allow it to provide similar tax information to a representative of this State:

a. Information to aid the jurisdiction in collecting a tax imposed by this State or the other jurisdiction.

b. Information needed for statistical reports and revenue estimates.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(5a) Reserved.

(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 and G.S. 105-187.44 or under former G.S. 105-116 and G.S. 105-120.

(5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local

prepared food and beverages tax, room occupancy tax, vehicle rental tax, or heavy equipment rental tax:

a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in a business subject to one or more of these local taxes.

b. The name, address, and identification number of a retailer audited by the Department regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of one or more of these local taxes.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the county or city official designated under G.S. 105-164.29B a list of claimants that have received a refund of the county sales or use tax to the extent authorized in that statute.

(7) To exchange information with the State Highway Patrol of the Department of Public Safety, the Division of Motor Vehicles of the Department of Transportation, the International Fuel Tax Association, Inc., or the Joint Operations Center for National Fuel Tax Compliance when the information is needed to fulfill a duty imposed on the Department of Revenue, the State Highway Patrol of the Department of Public Safety, or the Division of Motor Vehicles of the Department of Transportation.

(7a) To furnish the name and identifying information of motor carriers whose licenses have been revoked to the administrator of a national criminal justice system database that makes the information available only to criminal justice agencies and public safety organizations.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Division of Employment Security the name, address, and account and identification numbers of a taxpayer when the information is requested by the Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(9a) To furnish information to the Division of Employment Security to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The Division of Employment Security shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

a. Name, social security number, spouse's name, spouse's social security number, and county of residence.

b. Filing status and federal personal exemptions.

c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.

d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.

e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.

f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the following to the Fiscal Research Division of the General Assembly, upon request:

a. A sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

b. An analysis of the fiscal impact of proposed legislation.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture and Consumer Services when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Alcohol Law Enforcement Branch of the Department of Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Department of Justice.

d. Law enforcement agencies.

e. The Section of Community Corrections of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

(15a) To furnish to the appropriate local, State, or federal law enforcement agency, including a prosecutorial agency, information concerning the commission of an offense under the jurisdiction of that agency when the Department has initiated a criminal investigation of the taxpayer.

(16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(16a) To provide the North Carolina Self-Insurance Security Association information on self-insurers' premiums as determined under G.S. 105-228.5(b), (b1), and (c) for the purpose of collecting the assessments authorized in G.S. 97-133(a).

(17) To inform the Business License Information Office of the Department of Commerce of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller information needed by the State Controller to implement the setoff debt collection program established under G.S. 147-86.25, verify statewide vendor files, or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(20) **(See note for expiration date)** To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter. This subdivision is repealed when Part 6 of Article 21A of Chapter 143 of the General Statutes expires.

(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.

(22) To provide the Secretary of Administration pursuant to G.S. 143-59.1 a list of vendors and their affiliates who meet one or more of the conditions of G.S. 105-164.8(b) but refuse to collect the use tax levied under Article 5 of this Chapter on their sales delivered to North Carolina.

(23) To provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use taxes under Article 5 of this Chapter to a retailer because of an exemption or because they are authorized to pay the tax directly to the Department of Revenue.

(24) To furnish the Department of Commerce and the Division of Employment Security a copy of the qualifying information required in G.S. 105-129.7(b) or G.S. 105-129.86(b).

(25) To provide public access to a database containing the names and registration numbers of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter.

(26) To contract for the collection of tax debts pursuant to G.S. 105-243.1.

(27) To provide a publication or written determination required under this Chapter. The term "written determination" has the same meaning as defined in G.S. 105-264.2.

(28) To exchange information concerning a tax credit claimed under Article 3E of this Chapter with the North Carolina Housing Finance Agency.

(29) To provide to the Economic Investment Committee established pursuant to G.S. 143B-437.54 information necessary to implement economic development programs under the responsibility of the Committee.

(30) To prove that a business does not meet the definition of "small business" under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount.

(31) Repealed by Session Laws 2010-166, s. 3.7, effective July 1, 2010.

(32) Repealed by Session Laws 2006-162, s. 4(c), as amended by Session Laws 2007-527, s. 24, effective July 24, 2006.

(33) To provide to the North Carolina State Lottery Commission the information required under G.S. 18C-141.

(34) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film commissions.

(34a) To exchange information concerning a grant awarded under G.S. 143B-437.02A with the Department of Revenue, the Department of Commerce, or a contractor hired by the Department of Commerce and necessary for the Department to administer the program. A contractor hired pursuant to this subdivision shall be an agent of the State subject to the provisions of this statute with respect to any tax information provided.

(35) Repealed by Session Laws 2010-166, s. 3.7, effective July 1, 2010.

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.

(37) To furnish the Department of Commerce with the information needed to complete the study required under G.S. 105-129.82.

(38) To verify with a nonprofit organization or a unit of State or local government information relating to eligibility for a credit under G.S. 105-129.16H.

(39) To furnish the Department of State Treasurer with information it requests about whether a unit of local government has timely filed a withholding report, has been charged a penalty, or has paid a penalty, as such information may be helpful in auditing local government accounts pursuant to G.S. 159-34 and determining compliance with the Local Government Finance Act.

(39a) To furnish the Department of State Treasurer periodically upon request, the State tax return of a beneficiary, or the wage and income statement of beneficiary, or the NC-3 information of an employer, for the purpose of substantiating the beneficiary's statement required to be submitted under

G.S. 135-5(e)(4), 135-109, or 128-27(e)(4); or for the purpose of assisting a fraud or compliance investigation in accordance with G.S. 135-1(7b), 135-1(11b), 135-6(q), 128-21(7b), 128-21(11c), and 128-28(r); provided that no federal tax information may be disclosed under this subdivision unless such a disclosure is permitted by section 6103 of the Code.

(39b) To furnish to the Department of State Treasurer periodically upon request the State tax return of a beneficiary, or the wage and income statement of a beneficiary, or the NC-3 information of an employer for the purpose of assisting a fraud or compliance investigation or audit under G.S. 135-48.30(a)(9), or in accordance with G.S. 135-48.16; provided, however, that no federal tax information may be disclosed under this subdivision unless such a disclosure is permitted by section 6103 of the Code.

(40) To furnish a nonparticipating manufacturer, as defined in G.S. 66-292, the amount of the manufacturer's tobacco products that a taxpayer sold in this State by distributor, and that the Secretary reports to the Attorney General under G.S. 105-113.4C.

(40a) To furnish a data clearinghouse the information required to be released in accordance with the State's agreement under the December 2012 Term Sheet Settlement, as finalized by the State in the NPM Adjustment Settlement Agreement, concerning annual tobacco product sales by a nonparticipating manufacturer. Such information released to a data clearinghouse may be released to parties to the NPM Adjustment Settlement Agreement provided confidentiality protections are agreed to by the parties and overseen and enforced by this State's applicable court for enforcement of the Master Settlement Agreement for (i) any state information constituting confidential tax information or otherwise confidential under state law and (ii) manufacturer information designated confidential. The following definitions apply in this subdivision:

a. Data clearinghouse. – Defined in the Term Sheet Settlement and in the NPM Adjustment Settlement Agreement.
b. Master Settlement Agreement. – Defined in G.S. 66-290.
c. Nonparticipating manufacturer. – Defined in G.S. 66-292.
d. NPM Adjustment Settlement Agreement. – The final executed settlement document resulting from the 2012 Term Sheet Settlement.
e. Participating manufacturer. – Defined in G.S. 66-292.
f. Term Sheet Settlement. – The settlement agreement entered into in December 2012 by the State and certain participating manufacturers under the Master Settlement Agreement.

(41) To furnish the North Carolina Forest Service of the Department of Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Commissioner of Agriculture is able to comply with G.S. 106-1029 under the Primary Forest Product Assessment Act.

(42) To furnish to a taxpayer claiming a credit under G.S. 105-129.16A information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.

(43) To furnish requested workforce data to the North Carolina Longitudinal Data System, as required by G.S. 116E-6. Information furnished to the North Carolina Longitudinal Data System shall be provided in a nonidentifying form for statistical and analytical purposes to facilitate and enable the linkage of student data and workforce data and shall not include information allowing the identification of specific taxpayers.

(44) To furnish the State Budget Director or the Director's designee a sample of tax returns or other tax information from which taxpayers' names and identification numbers have been removed that is suitable in character, composition, and size for statistical analyses by the Office of State Budget and Management.

(45) To furnish tax information to the State Chief Information Officer pursuant to G.S. 143B-1385. The use and reporting of individual data may be restricted to only those activities specifically allowed by law when potential fraud or other illegal activity is indicated.

(46) To furnish to a person who provides the State with a bond or irrevocable letter of credit on behalf of a taxpayer the information necessary for the Department to collect on the bond or letter of credit in the case of noncompliance with the tax laws by the taxpayer covered by the bond or letter of credit.

(47) To provide the Alcoholic Beverage Control Commission the information required under G.S. 18B-900.

(48) To furnish to the Department of Environmental Quality the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environmental Quality to notify the entity that the Department of Environmental Quality shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395.

(49) To exchange information concerning a tax imposed by Article 8B of this Chapter with the North Carolina Department of Insurance when the information is needed to fulfill a duty imposed on the Department.

(50) To provide public access to a list containing the name, physical address, and account number of entities licensed under Article 2A of this Chapter to aid in the administration of the tobacco products tax.

(51) To exchange information regarding the tax imposed on motor carriers under Article 36B of this Chapter with other jurisdictions that administer the International Fuel Tax Agreement to aid in the administration of the Agreement.

(52) To furnish tax information to the State Education Assistance Authority as necessary for administering the coordinated and centralized residency determination process in accordance with Article 14 of Chapter 116 of the General Statutes.

(53) To furnish to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Industrial Commission, and the Employee Classification Section within the Industrial Commission employee misclassification information pursuant to Article 83 of Chapter 143 of the General Statutes.

(54) To provide to the Office of Child Support and Enforcement of the Department of Health and Human Services State tax information that relates to noncustodial

parent location information as required under 45 C.F.R. § 303.3 and Title IV-D of the Social Security Act.

(b1) Information Security. – The Secretary shall, consistent with the requirements of this section to maintain secrecy of tax information, determine when, how, and under what conditions the disclosure of tax information authorized by subsection (b) of this section shall be made. The Secretary shall be solely responsible for determining whether information security protections for systems or services that store, process, or transmit State or federal tax information are adequate, and the Secretary is not required to use any systems or services determined to be inadequate.

(c) Punishment. – A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1939, c. 158, s. 928; 1951, c. 190, s. 2; 1973, c. 476, s. 193; c. 903, s. 4; c. 1287, s. 13; 1975, c. 19, s. 29; c. 275, s. 7; 1977, c. 657, s. 6; 1979, c. 495; 1983, c. 7; 1983 (Reg. Sess., 1984), c. 1004, s. 3; c. 1034, s. 125; 1987, c. 440, s. 4; 1989, c. 628; c. 728, s. 1.47; 1989 (Reg. Sess., 1990), c. 945, s. 15; 1993, c. 485, s. 31; c. 539, s. 712; 1994, Ex. Sess., c. 14, s. 51; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 8.4; 1995, c. 17, s. 11; c. 21, s. 2; 1997-118, s. 6; 1997-261, s. 14; 1997-340, s. 2; 1997-392, s. 4.1; 1997-475, s. 6.11; 1998-22, ss. 10, 11; 1998-98, ss. 13.1(b), 20; 1998-139, s. 1; 1998-212, s. 12.27A(o); 1999-219, s. 7.1; 1999-340, s. 8; 1999-341, s. 8; 1999-360, s. 2.1; 1999-438, s. 18; 1999-452, s. 28.1; 2000-120, s. 8; 2000-173, s. 11; 2001-205, s. 1; 2001-380, s. 5; 2001-476, s. 8(b); 2001-487, ss. 47(d), 123; 2002-87, s. 7; 2002-106, s. 5; 2002-172, s. 2.3; 2003-349, s. 4; 2003-416, s. 2; 2004-124, s. 32D.3; 2004-170, s. 23; 2004-204, 1st Ex. Sess., s. 4; 2005-276, ss. 31.1(cc), 39.1(c), 7.27(b); 2005-400, s. 20; 2005-429, s. 2.13; 2005-435, ss. 32(b), 32(c), 37, 48; 2006-162, s. 4(c); 2006-196, s. 11; 2006-252, s. 2.21; 2007-397, s. 13(d); 2007-491, s. 38; 2007-527, ss. 24, 33, 34, 35, 36; 2008-107, s. 28.25(d); 2008-144, s. 4; 2009-283, s. 1; 2009-445, s. 39; 2009-483, ss. 5, 10; 2010-31, ss. 13.15, 31.8(g); 2010-95, s. 11; 2010-166, s. 3.7; 2010-167, s. 2(c); 2011-145, ss. 19.1(g), (h), (k), (n), (p), 13.25(nn), (xx); 2011-330, s. 33(b); 2011-401, ss. 3.9, 5.1; 2012-83, s. 35; 2012-133, s. 1(b); 2013-155, s. 6; 2013-360, ss. 6.9, 7.10(c); 2013-414, s. 19; 2014-3, ss. 9.3, 10.1(c); 2014-4, s. 17(b); 2014-100, s. 17.1(xxx); 2014-115, s. 56.8(e); 2015-99, s. 2; 2015-241, ss. 6.24(h), 7A.4(h), 14.30(u), (v), 15.25(b), 16A.7(j); 2016-5, s. 4.5(a); 2016-57, s. 2(f); 2016-103, s. 7; 2017-128, s. 6(a); 2017-135, s. 7(a); 2017-186, s. 2(uuuu); 2017-203, s. 2; 2017-204, s. 4.7; 2018-5, ss. 37.5(a), 38.6(e).)

§ 105-260. Evaluation of Department personnel.

The Secretary may not use records of tax enforcement results, or production goals based on these records, as the sole criteria in evaluating employees of the Department who are directly involved in tax collection activities or in evaluating the immediate supervisors of these employees. The Secretary must consider records of taxpayer complaints that named an employee as discourteous, unresponsive, or incompetent in evaluating the employee.

(1939, c. 158, s. 929; 1973, c. 476, s. 193; 1981, c. 859, s. 79; c. 1127, s. 53; 1993, c. 532, s. 8.)

§ 105-260.1. Delegation of authority to hold hearings.

The Secretary may delegate the authority to hold a hearing required or allowed under this Chapter. (1985, c. 258; 2014-3, s. 9.4.)

§ 105-261. Secretary and deputies to administer oaths.

The Secretary of Revenue and such deputies as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this Subchapter or under the rules and regulations of the Secretary of Revenue, and shall have access to all the books and records of any person, firm, corporation, county, or municipality in this State. (1939, c. 158, s. 930; 1973, c. 476, s. 193.)

§ 105-262. Rules.

(a) Authority. – The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. G.S. 150B-1 and Article 2A of Chapter 150B of the General Statutes set out the procedure for the adoption of rules by the Secretary.

(b) Repealed by Session Laws 2012-43, s. 1, effective June 20, 2012, and Session Laws 2012-79, s. 1.14(d), effective June 26, 2012.

(c) Fiscal Note. – The Secretary must ask the Office of State Budget and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared. (1939, c. 158, s. 931; 1955, c. 1350, s. 2; 1973, c. 476, s. 193; 1981, c. 859, s. 80; c. 1127, s. 53; 1991, c. 45, s. 28; c. 477, s. 7; 1995, c. 507, s. 27.8(p); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2007-491, s. 39; 2010-31, s. 31.10(f); 2012-43, s. 1; 2012-79, s. 1.14(d).)

§ 105-262.1. Rules to exercise authority under G.S. 105-130.5A.

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited

procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definitions. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules, and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must provide electronic notification of the adoption of a rule to persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including those originally given notice of the rule making and those who provided comment on the rule. If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this section. A person may object to the rule and request review by the Commission at any point following the agency's adoption of the rule and by 5:00 P.M. on the third business day following electronic notification from the Secretary of the adoption of a rule. If the Secretary receives no written comment objecting to the rule and requesting review by the Commission, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.
(2) It is clear and unambiguous.
(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
(4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a

recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) Effective Date. – G.S. 150B-21.3 does not apply to a rule adopted under this section. A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code. (2012-43, s. 2; 2013-414, s. 48.)

§ 105-263. Timely filing of mailed documents and requests for extensions.

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

(b) **(Effective for taxable years beginning before January 1, 2019)** Extension. – The Secretary may extend the time in which a person must file a return with the Secretary. To obtain an extension of time for filing a return, a person must comply with any application requirement set by the Secretary. An extension of time for filing a franchise tax return or an income tax return does not extend the time for paying the tax due or the time

when a penalty attaches for failure to pay the tax. An extension of time for filing any return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a return extends the time for paying the tax expected to be due with the return, interest, at the rate established pursuant to G.S. 105-241.21, accrues on the tax due from the original due date of the return to the date the tax is paid.

(b) **(Effective for taxable years beginning on or after January 1, 2019)** Extension. – The Secretary may extend the time in which a person must file a return with the Secretary. Except as provided in subsection (c) of this section, a person must comply with any application requirement set by the Secretary to obtain an extension of time for filing a return. An extension of time for filing a franchise tax return or an income tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing any return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a return extends the time for paying the tax expected to be due with the return, interest, at the rate established pursuant to G.S. 105-241.21, accrues on the tax due from the original due date of the return to the date the tax is paid.

(c) **(Effective for taxable years beginning on or after January 1, 2019)** Automatic Extension. – A person who is granted an automatic extension to file a federal income tax return, including a return of partnership income, is granted an automatic extension to file the corresponding State income tax return and franchise tax return. The person must certify on the State tax return that the person was granted a federal extension.

(d) Electronic Documents. – The Secretary shall prescribe when a return, report, payment, or any other document that is electronically submitted to the Department is timely filed. (1939, c. 158, s. 932; 1973, c. 476, s. 193; 1977, c. 1114, s. 2; 1989 (Reg. Sess., 1990), c. 984, s. 14; 1991 (Reg. Sess., 1992), c. 930, s. 11; 1997-300, s. 1; 2007-491, s. 44(1)a; 2008-107, s. 28.18(c); 2010-95, s. 10(a); 2012-79, s. 1.8; 2013-414, s. 1(j); 2018-5, ss. 38.4(a), 38.10(q).)

§ 105-264. Effect of Secretary's interpretation of revenue laws.

(a) Interpretation. – It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

(b) Advice. – If a taxpayer requests specific advice from the Department and receives erroneous advice in response, the taxpayer is not liable for any penalty or

additional assessment attributable to the erroneous advice furnished by the Department to the extent that the following conditions are all satisfied:

(1) The advice was reasonably relied upon by the taxpayer.

(2) The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

(3) The Department provided the advice in writing or the Department's records establish that the Department provided erroneous verbal advice.

(c) Revised Interpretations. – This section does not prevent the Secretary from changing an interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change. An interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due may not become effective sooner than the following:

(1) For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.

(2) For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

(d) Fee. – The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars ($100.00) or more than five thousand dollars ($5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)

§ 105-264.1. Secretary's interpretation applies to local taxes that are based on State taxes.

An interpretation by the Secretary of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law to determine the application of the local law. A person who is subject to the local law or the unit of local government that administers the local law may ask the Secretary for an interpretation of the State law that determines the application of the local law. An interpretation by the Secretary of a State law that determines the application of a local law provides the same protections against liability under the local law that it provides under the State law. (2008-134, s. 12(a).)

§ 105-264.2. Publication of written determinations.

(a) Written Determinations. – A written determination applies the tax law to a specific set of existing facts furnished by a particular taxpayer. A written determination is

applicable only to the individual taxpayer addressed and as such has no precedential value except to the taxpayer to whom the determination is issued.

(b) Publication. – The text of a written determination must be published on the Department's Web site within 90 days of the date the determination is provided to the taxpayer. The text of a written determination must be redacted as provided in subsection (c) of this section before it is published. The publication requirement of this section does not include disclosure of background file documents.

(c) Redacted Written Determinations. – The Secretary must redact all of the following from a written determination before it is published:

(1) The names, addresses, and other identifying details of the taxpayer to whom the written determination pertains.

(2) The names, addresses, and other identifying details of any other person referenced in the written determination.

(3) Information specifically exempted from disclosure by State or federal law.

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

(d) Liability. – The Secretary must determine the appropriate extent of the redactions. The Secretary is not liable for failure to make redactions unless the Secretary fails to make the redactions in intentional and willful disregard of this section, has agreed to redact the information, or has been ordered by a court to make the redaction.

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

(1) Alternative apportionment ruling. – Written advice issued by the Secretary to a taxpayer pursuant to a written request by the taxpayer for alternative apportionment under G.S. 105-130.4(t1) or under G.S. 105-122(c1).

(2) Background file document. – Any one or more of the following:

a. The request for the written determination.

b. Any written materials submitted in support of the request.

c. Any communication between the Department and persons outside the Department in connection with the written determination.

d. Any information submitted by the taxpayer in response to a request from the Department for information that is required to provide the written determination.

(3) Private letter ruling. – Written advice issued by the Secretary to a taxpayer pursuant to a written request by the taxpayer for specific advice under G.S. 105-264(b).

(4) Redetermination private letter ruling. – Written advice issued by the Secretary to a corporation under G.S. 105-130.5A concerning one or more of the following:

a. Specific advice requested in writing by a corporation as to whether a redetermination of a corporation's State net income or a combined return is required by the Secretary, as provided under G.S. 105-130.5A(m).

b. A determination and agreement made jointly between the Secretary and a corporation to an alternative filing methodology that accurately reports State net income, as provided under G.S. 105-130.5A(c).

(5) Written determination. – Any one or more of the following:

a. An alternative apportionment ruling.
b. A private letter ruling.
c. A redetermination private letter ruling. (2016-103, s. 5.)

§ 105-265: Repealed by Session Laws 1991, c. 45, s. 19.

§ 105-266: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-266.1: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-266.2. Refund of tax paid on substantial income later restored.

This section applies to a taxpayer who is subject to the alternative tax under § 1341(a)(5) of the Code for the current taxable year because the taxpayer restored an item of income that had been included in the taxpayer's gross income for an earlier taxable year. For the purpose of Article 4 of this Chapter, the taxpayer is considered to have made a payment of tax for the current taxable year on the later of the date the return for the current taxable year was filed or the date the return was due to be filed. The amount of this payment of tax is (i) the amount the taxpayer's tax under Article 4 for the earlier taxable year was increased because the item of income was included in gross income for that year minus (ii) the amount the taxpayer's tax under Article 4 for the current taxable year was decreased because the item was deductible for that year. To the extent this payment of tax creates an overpayment, the overpayment is refundable in accordance with G.S. 105-241.21. (1997-213, s. 1; 2007-491, s. 44(1)c.)

§ 105-267: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-267.1: Repealed by Session Laws 1991, c. 45, s. 30.

§ 105-268. Reciprocal comity.

The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend a like comity to this State. (1939, c. 158, s. 938.)

§ 105-268.1. Agreements to coordinate the administration and collection of taxes.

The Secretary of Revenue is hereby authorized, with the approval of the Governor and Council of State, to enter into agreements with the United States government or any department or agency thereof, or with a state or any political subdivision thereof, for the purpose of coordinating the administration and collection of taxes imposed by this State and administered and collected by said Secretary with taxes imposed by the United States or by any other state or political subdivision thereof. (1943, c. 747, s. 1; 1971, c. 806, s. 2; 1973, c. 476, s. 193.)

§ 105-268.2. Expenditures and commitments authorized to effectuate agreements.

The Secretary of Revenue with the approval of the Governor and Council of State is authorized and empowered to undertake such commitments and make such expenditures, within the appropriations provided by law, as may be necessary to effectuate such agreements. (1943, c. 747, s. 2; 1971, c. 806, s. 2; 1973, c. 476, s. 193.)

§ 105-268.3. Returns to be filed and taxes paid pursuant to agreements.

Notwithstanding any other provision of law, returns shall be filed and taxes paid in accordance with the provisions of any agreement entered into pursuant to this Article. (1943, c. 747, s. 3; 1971, c. 806, s. 2.)

§ 105-269. Extraterritorial authority to enforce payment.

(a) The Secretary, with the assistance of the Attorney General, is authorized to bring suits in the courts of other states to collect taxes legally due this State. The officials of other states that extend a like comity to this State are empowered to sue for the collection of taxes in the courts of this State. A certificate by the Secretary of State, under the Great Seal of the State, that these officers have authority to collect the tax is conclusive evidence of this authority. Whenever the Secretary considers it expedient to employ local counsel to assist in bringing suit in an out-of-state court, the Secretary, with the concurrence of the Attorney General, may employ local counsel on the basis of a negotiated retainer or in accordance with prevailing commercial law league rates.

(b) Repealed by Session Laws 2001-380, s. 4, effective August 20, 2001, and applicable to tax debts that remain unpaid on or after that date. (1939, c. 158, s. 939; 1963, c. 1169, s. 6; 1973, c. 476, s. 193; 1983 (Reg. Sess., 1984), c. 1005; 2001-380, s. 4.)

§ 105-269.1. Local authorities authorized to furnish office space.

Boards of county commissioners and governing boards of cities and towns are hereby fully authorized and empowered to furnish adequate and suitable office space for field representatives of the Department of Revenue upon request of the Secretary of Revenue, and are hereby authorized and empowered to make necessary expenditures therefor. (1951, c. 643, s. 9; 1973, c. 476, s. 193.)

§ 105-269.2: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-269.3. Enforcement of Subchapter V and fuel inspection tax.

The State Highway Patrol and law enforcement officers and other appropriate personnel in the Department of Public Safety may assist the Department of Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers of the Department of Public Safety have the power of peace officers in matters concerning the enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. (1963, c. 1169, s. 6; 1991, c. 42, s. 16; 1991 (Reg. Sess., 1992), c. 1007, s. 17; 1993, c. 485, s. 15; 1993 (Reg. Sess., 1994), c. 745, s. 19; 2002-159, s. 31.5(b); 2002-190, s. 2; 2011-145, s. 19.1(g).)

§ 105-269.4. Election to apply income tax refund to following year's tax.

Any taxpayer required to file an income tax return under Article 4 of this Subchapter whose return shows that the taxpayer is entitled to a refund may elect to apply part or all of the refund to that taxpayer's estimated income tax liability for the following year. The Secretary of Revenue shall amend the income tax returns to permit the election authorized by this section. (1983, c. 663, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 28.)

§ 105-269.5. Contribution of income tax refund to Wildlife Conservation Account.

Any taxpayer entitled to a refund of income taxes under Article 4 of this Chapter may elect to contribute all or part of the refund to the Wildlife Conservation Account established under G.S. 143-247.2 to be used for the management, protection, and preservation of wildlife in accordance with that statute. The Secretary shall provide appropriate language and space on the income tax form in which to make the election. The taxpayer's election becomes irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Wildlife Conservation Account. (1983, c. 865, s. 2; 1991, c. 45, s. 20; 1993, c. 543, s. 6.)

§ 105-269.6: Repealed by Session Laws 2002-158, s. 6(a), effective for taxable years beginning on or after January 1, 2003.

§ 105-269.7. Contribution of income tax refund or payment to the North Carolina Education Endowment Fund.

Any taxpayer entitled to a refund of income taxes under Article 4 of this Chapter, or any taxpayer who desires to make a contribution, may elect to contribute all or part of the refund or may make a contribution to the North Carolina Education Endowment Fund established pursuant to G.S. 115C-472.16 to be used in accordance with that statute. The Secretary shall provide appropriate language and space on the income tax form in which to make the election or contribution. The taxpayer's election or contribution becomes irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall transmit the amounts designated pursuant to this section to the State Treasurer for credit to the North Carolina Education Endowment Fund. (2014-100, s. 8.11(h).)

§ 105-269.8. (Effective for taxable years beginning on or after January 1, 2017 and expiring for taxable years beginning on or after January 1, 2021) Contribution by individual for early detection of breast and cervical cancer.

(a) Contribution. – An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to be used for early detection of breast and cervical cancer at the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The Secretary shall include in the income tax instructions an explanation that the contributions will be used for early detection of breast and cervical

cancer only. The election becomes irrevocable upon filing the individual's income tax return for the taxable year.

(b) Distribution. – The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer to be distributed for early detection of breast and cervical cancer. The State Treasurer shall distribute the contributions to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. Funds distributed pursuant to this section shall be used only for early detection of breast and cervical cancer and shall be used in accordance with North Carolina's Breast and Cervical Cancer Control Program's policies and procedures.

(c) Sunset. – This section expires for taxable years beginning on or after January 1, 2021. (2017-204, s. 6.2(a).)

§ 105-269.9: Reserved for future codification purposes.

§ 105-269.10: Reserved for future codification purposes.

§ 105-269.11: Reserved for future codification purposes.

§ 105-269.12: Reserved for future codification purposes.

§ 105-269.13. Debts not collectible under North Carolina law.

(a) Debts Not Collectible. – The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. – A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars ($5,000,000) on its most recent federal income tax return.

(c) Assignment. – An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section. (2000-120, s. 9.)

§ 105-269.14. Payment of use tax with individual income tax.

(a) Requirement. – An individual who owes use tax that is payable on an annual basis pursuant to G.S. 105-164.16(d) and who is required to file an individual income tax return under Part 2 of Article 4 of this Chapter must pay the use tax with the individual income tax return for the taxable year. The Secretary must provide appropriate space and

information on the individual income tax form and instructions. The information must include the following:

(1) An explanation of an individual's obligation to pay use tax on items purchased from mail order, Internet, or other sellers that do not collect State and local sales and use taxes on the items.

(2) A method to help an individual determine the amount of use tax the individual owes. The method must list categories of items, such as personal computers and clothing, that are commonly sold by mail order or Internet and must include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

(b) Distribution. – The Secretary must distribute a portion of the net use tax proceeds collected under this section to counties and cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, and 43 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section. (1999-341, s. 2; 2000-120, s. 10; 2002-72, s. 20; 2003-284, s. 44.1; 2005-276, s. 33.24; 2007-323, s. 31.16.3(i); 2009-451, s. 27A.3(b), (c); 2010-95, s. 42.)

§ 105-269.15. Income tax credits of partnerships.

(a) Qualification. – A partnership that engages in an activity that is eligible for a tax credit qualifies for the credit as an entity and then passes through to each of its partners the partner's distributive share of the credit for which the partnership entity qualifies. Maximum dollar limits and other limitations that apply in determining the amount of a tax credit available to a taxpayer apply to the same extent in determining the amount of a tax credit for which the partnership entity qualifies, with one exception. The exception is a limitation that the tax credit cannot exceed the amount of tax imposed on the taxpayer.

(b) Allowance of Credit to Partner. – A partner's distributive share of an income tax credit passed through by a partnership is allowed to the partner only to the extent the partner would have qualified for the credit if the partner stood in the position of the partnership. All limitations on an income tax credit apply to each partner to the extent of the partner's distributive share of the credit, except that a corporate partner's distributive share of an individual income tax credit is allowed as a corporation income tax credit to the extent the corporate partner could have qualified for a corporation income tax credit if it stood in the position of the partnership. All limitations on an income tax credit apply to the sum of the credit passed through to the partner plus the credit for which the partner qualifies directly.

(c) Determination of Distributive Share. – A partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code. (1993 (Reg. Sess., 1994), c. 674, s. 3; 2001-335, s. 1.)

Article 10.

Liability for Failure to Levy Taxes.

§ 105-270. Repeal of laws imposing liability upon governing bodies of local units.

All laws and clauses of laws, statutes and parts of statutes, imposing civil or criminal liability upon the governing bodies, of local units, or the members of such governing bodies, for failure to levy or to vote for the levy of any particular tax or rate of tax for any particular purpose, are hereby repealed, and said governing bodies and any and all members thereof are hereby freed and released from any civil or criminal liability heretofore imposed by any law or statute for failure to levy or to vote for the levy of any particular tax or tax rate for any particular purpose. (1933, c. 418.)

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

Article 11.

Short Title, Purpose, and Definitions.

§ 105-271. Official title.

This Subchapter may be cited as the Machinery Act. (1939, c. 310, s. 1; 1971, c. 806. s. 1.)

§ 105-272. Purpose of Subchapter.

The purpose of this Subchapter is to provide the machinery for the listing, appraisal, and assessment of property and the levy and collection of taxes on property by counties and municipalities. It is the intent of the General Assembly to make the provisions of this Subchapter uniformly applicable throughout the State, and to assure this objective no local act to become effective on or after July 1, 1971, shall be construed to repeal or amend any section of this Subchapter in whole or in part unless it shall expressly so provide by specific reference to the section to be repealed or amended. As used in this section, the term "local act" means any act of the General Assembly that applies to one or more counties by name, to one or more municipalities by name, or to all municipalities within one or more named counties. (1939, c. 310, s. 1802; 1971, c. 806, s. 1; 1991, c. 11, s. 1.)

§ 105-273. Definitions.

The following definitions apply in this Subchapter:

(1) Abstract. – The document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) Appraisal. – The true value of property or the process by which true value is ascertained.

(3) Assessment. – The tax value of property or the process by which the assessment is determined.

(3a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2014 and before July 1, 2016. See note for repeal.)** "Builder" means a taxpayer licensed as a general contractor under G.S. 87-1 and engaged in the

business of buying real property, making improvements to it, and then reselling it.

(3a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2016. See note)** "Builder" means a taxpayer engaged in the business of buying real property, making improvements to it, and then reselling it.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(4a) Code. – Defined in G.S. 105-228.90.

(5) Collector or tax collector. – A person charged with the duty of collecting taxes for a county or municipality.

(5a) Construction contractor. – A taxpayer who is regularly engaged in building, installing, repairing, or improving real property.

(6) Corporation. – An organization having capital stock represented by shares or an incorporated, nonprofit organization.

(6a) Discovered property. – Any of the following:

a. Property that was not listed during a listing period.

b. Property that was listed but the listing included a substantial understatement.

c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) Discover property. – Determine any of the following:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) Document. – A book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, or any other thing conveying information.

(7a) Failure to list property. – Any of the following:

a. Failure to list property during a listing period.

b. A substantial understatement of listed property.

c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) Intangible personal property. – Patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, or other like property.

(8a) Inventories. – Any of the following:

a. Goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold.

b. Goods held by construction contractors to be furnished in the course of building, installing, repairing, or improving real property.

c. As to manufacturers, raw materials, goods in process, finished goods, or other materials or supplies that are consumed in manufacturing or

processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.

d. A modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business.

e. Crops, livestock, poultry, feed used in the production of livestock and poultry, or other agricultural or horticultural products held for sale, whether in process or ready for sale.

(9) List or listing. – An abstract, when the term is used as a noun.

(10) Repealed by Session Laws 1987, c. 43, s. 1.

(10a) Local tax official. – A county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, or the municipal equivalent of one of these officials.

(10b) Manufacturer. – A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term 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.

(11) Municipal corporation or municipality. – A city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, a consolidated city-county as defined by G.S. 160B-2, or another district or unit of local government by or for which ad valorem taxes are levied.

(12) Person. – An individual, a trustee, an executor, an administrator, another fiduciary, a corporation, a limited liability company, an unincorporated association, a partnership, a sole proprietorship, a company, a firm, or another legal entity.

(13) Real property, real estate, or land. – Any of the following:

a. The land itself.

b. Buildings, structures, improvements, or permanent fixtures on land.

c. All rights and privileges belonging or in any way appertaining to the property.

d. A manufactured home as defined in G.S. 143-143.9(6), unless it is considered tangible personal property for failure to meet all of the following requirements:

1. It is a residential structure.

2. It has the moving hitch, wheels, and axles removed.

3. It is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years and

the lease expressly provides for disposition of the manufactured home upon termination of the lease.

(13a) Retail merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) Substantial understatement. – The omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) Tangible personal property. – All personal property that is not intangible and that is not permanently affixed to real property.

(15) Tax or taxes. – The principal amount of any property tax or dog license tax and costs, penalties, and interest.

(16) Taxing unit. – A county or municipality authorized to levy ad valorem property taxes.

(17) Taxpayer. – A person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation.

(18) Valuation. – Appraisal and assessment.

(19) Wholesale merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale. (1939, c. 310, s. 2; 1971, c. 806, s. 1; 1973, c. 695, ss. 14, 15; 1985, c. 656, s. 20; 1985 (Reg. Sess., 1986), c. 947, ss. 3, 4; 1987, c. 43, s. 1; c. 440, s. 2; c. 805, s. 3; c. 813, ss. 1-4; 1991, c. 34, s. 3; 1991 (Reg. Sess., 1992), c. 975, s. 1; c. 1004, s. 1; 1993, c. 354, s. 23; c. 459, s. 1; 1995, c. 461, s. 15; 1998-212, s. 29A.18(c); 2001-506, s. 1; 2002-156, s. 4; 2003-400, s. 4; 2006-106, ss. 1, 8; 2008-35, s. 1.1; 2009-308, s. 1; 2009-445, s. 20; 2015-223, s. 1.)

Article 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation.

(a) All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is:

(1) Excluded from the tax base by a statute of statewide application enacted under the classification power accorded the General Assembly by Article V, § 2(2), of the North Carolina Constitution, or

(2) Exempted from taxation by the Constitution or by a statute of statewide application enacted under the authority granted the General Assembly by Article V, § 2(3), of the North Carolina Constitution.

(b) No provision of this Subchapter shall be construed to exempt from taxation any property situated in this State belonging to any foreign corporation unless the context of the provision clearly indicates a legislative intent to grant such an exemption. (1939, c. 310, ss. 303, 1800; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1.)

§ 105-275. Property classified and excluded from the tax base.

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

(1) Repealed by Session Laws 1987, c. 813, s. 5.

(2) Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting further shipment for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)

(3) Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.

(4) Repealed by Session Laws 1987, c. 813, s. 5.

(5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Vietnam Era so long as they are owned by:

a. A person to whom a vehicle has been given by the United States government or

b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.

(5a) A motor vehicle owned by a disabled veteran that is altered with special equipment to accommodate a service-connected disability. As used in this section, disabled veteran means a person as defined in 38 U.S.C. § 101(2) who is entitled to special automotive equipment for a service-connected disability, as provided in 38 U.S.C. § 3901.

(6) Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the special nuclear materials. The terms "manufacture" and "processing" do not include the use of special nuclear materials as fuel. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of

Environmental Quality or the Nuclear Regulatory Commission. The most stringent of these standards shall govern.

(7) Real and personal property that is:

a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, and

b. Appropriated exclusively for public parks and drives.

(7a) **(Expiring for taxes imposed for taxable years beginning on or after July 1, 2021)** Real and personal property that meets each of the following requirements:

a. It is a contiguous tract of land previously (i) used primarily for commercial or industrial purposes and (ii) damaged significantly as a result of a fire or explosion.

b. It was donated to a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes by an entity other than an affiliate, as defined in G.S. 105-163.010.

c. No portion is or has been leased or sold by the nonprofit corporation.

(8) a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Department of Environmental Quality or 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 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

1. Has been or will be constructed or installed;

2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will comply with the requirements of the Environmental Management Commission or local air pollution control program;

3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and

4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting

from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.

a1. Sub-subdivision a. of this subdivision shall not apply to an animal waste management system, as defined in G.S. 143-215.10B, unless the Environmental Management Commission determines that the animal waste management system will accomplish all of the following:

1. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
2. Substantially eliminate atmospheric emissions of ammonia.
3. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the farm is located.
4. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
5. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Environmental Quality furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environmental Quality has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environmental Quality, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.

c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16 of G.S. Chapter 95. Notwithstanding the exclusive use requirement of this sub-subdivision, all parts of a ventilation or air conditioning system that are integrated into a system used for the prevention or reduction of cotton dust, except for chillers and cooling towers, are excluded from taxation under this sub-subdivision. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion.

d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environmental Quality furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environmental Quality has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules

of the Department of Environmental Quality, and has, or will have as a purpose recycling or resource recovering of or from solid waste.

(9) through (11) Repealed by Session Laws 1987, c. 813, s. 5.

(12) Real property that (i) is owned by a nonprofit corporation or association organized to receive and administer lands for conservation purposes, (ii) is exclusively held and used for one or more of the purposes listed in this subdivision, and (iii) produces no income or produces income that is incidental to and not inconsistent with the purpose or purposes for which the land is held and used. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding five fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property (i) is no longer exclusively held and used for one or more of the purposes listed in this subdivision, (ii) produces income that is not incidental to and consistent with the purpose or purposes for which the land is held and used, or (iii) is sold or transferred without an easement recorded at the time of sale that requires perpetual use of the land for one or more of the purposes listed in this subdivision and that prohibits any use of the land that would generate income that is not incidental to and consistent with the purpose or purposes for which the land is held and used. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the real property being sold or transferred to a local, state, or federal government unit for conservation purposes or subject to an easement recorded at the time of sale that requires perpetual use of the land for one or more of the purposes listed in this subdivision. The purposes allowed under this subdivision are any of the following:

a. Used for an educational or scientific purpose as a nature reserve or park in which wild nature, flora and fauna, and biotic communities are preserved for observation and study. For purposes of this sub-subdivision, the terms "educational purpose" and "scientific purpose" are defined in G.S. 105-278.7(f).

b. Managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission.

c. Managed under a forest stewardship plan developed by the Forest Stewardship Program.

d. Used for public access to public waters or trails.

e. Used for protection of water quality and subject to a conservation agreement under the provision of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes.

f. Held by a nonprofit land conservation organization for sale or transfer to a local, state, or federal government unit for conservation purposes.

(13) Repealed by Session Laws 1973, c. 904.

(14) Motor vehicles chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.

(15) Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.)

(16) Non-business Property. – As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.

(17) Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any similar veterans organizations chartered by the Congress of the United States or organized and operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(18) Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd

Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by the organization, together with as much additional adjacent real property as may be necessary for the convenient normal use of the buildings. Notwithstanding the exclusive-use requirement of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed, or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes.

(19a) Improvements to real property that are (i) owned by social fraternities, sororities, and similar college, university, or high school organizations and (ii) located on land owned by or allocated to The University of North Carolina or one if its constituent institutions.

(20) Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabilitation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation.

(21) Repealed by Session Laws 2008-107, s. 28.11(a), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(22) Repealed by Session Laws 1987, c. 813, s. 5.

(23) Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.

(24) Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.

The term "container" applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate reloadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.

(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms "interstate air courier" and "hub" have the meanings provided in G.S. 105-164.3.

(25) Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State.

(26) For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina.

(27), (28) Repealed by Session Laws 1983, c. 643, s. 1.

(29) Real property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement to be prepared and recorded, at the time of sale, under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.

(29a) Land that is within an historic district and is held by a nonprofit corporation organized for historic preservation purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the location of an historic structure on the site within the time period allowed under this subdivision.

(30) Repealed by Session Laws 1987, c. 813, s. 5.

(31) **(Effective for taxes imposed for taxable years beginning before July 1, 2019)** Intangible personal property other than a leasehold interest that is in exempted real property and is not excluded under subdivision (31e) of this section. This subdivision does not affect the taxation of software not otherwise excluded by subdivision (40) of this section.

(31) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2019)** Intangible personal property other than software not otherwise excluded by subdivision (40) of this section.

(31a) through (31d) Repealed by Session Laws 1997-23, s. 3.

(31e) **(Repealed effective for taxes imposed taxable years beginning on or after July 1, 2019)** A leasehold interest in real property that is exempt under G.S. 105-278.1 and is used to provide affordable housing for employees of the unit of government that owns the property.

(32) Recodified as G.S. 105-278.6A by Session Laws 1998-212, s. 29A.18(a), effective for taxes imposed for taxable years beginning on or after July 1, 1998.

(32a) Inventories owned by contractors.

(33) Inventories owned by manufacturers.

(34) Inventories owned by retail and wholesale merchants.

(35) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).

(36) Repealed by Session Laws 2001-474, s. 8, effective November 29, 2001.

(37) Poultry and livestock and feed used in the production of poultry and livestock.

(38) Repealed by Session Laws 2001-474, s. 8, effective November 29, 2001.

(39) Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a State or local government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of State or local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by the unit of State or local government. If only part of the property is used for a public purpose, only that part is excluded from the tax. This subdivision does not apply if any distributions are made to members, officers, or directors of the nonprofit corporation.

(39a) A correctional facility, including construction in progress, that is located on land owned by the State and is constructed pursuant to a contract with the State, and any leasehold interest in the land owned by the State upon which the correctional facility is located.

(40) Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.

b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other. The foregoing does not include development of software or any modifications to software, whether done internally by the taxpayer or externally by a third party, to meet the customer's specified needs.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter.

The provisions of the exclusion established by this subdivision are not severable. If any provision of this subdivision or its application is held invalid, the entire subdivision is repealed.

(41) Repealed by Session Laws 2012-120, s. 1(a), effective October 1, 2012.

(42) A vehicle that is offered at retail for short-term lease or rental and is owned or leased by an entity engaged in the business of leasing or renting vehicles to the general public for short-term lease or rental. For the purposes of this subdivision, the term "short-term lease or rental" shall have the same meaning as in G.S. 105-187.1, and the term "vehicle" shall have the same meaning as in G.S. 153A-156(e) and G.S. 160A-215.1(e). A gross receipts tax as set forth by G.S. 153A-156 and G.S. 160A-215.1 is substituted for and replaces the ad valorem tax previously levied on these vehicles.

(42a) Heavy equipment on which a gross receipts tax may be imposed under G.S. 153A-156.1 and G.S. 160A-215.2.

(43) Real or tangible personal property that is subject to a capital lease pursuant to G.S. 115C-531.

(44) Free samples of drugs that are required by federal law to be dispensed only on prescription and are given to physicians and other medical practitioners to dispense free of charge in the course of their practice.

(45) Eighty percent (80%) of the appraised value of a solar energy electric system. For purposes of this subdivision, the term "solar energy electric system" means all equipment used directly and exclusively for the conversion of solar energy to electricity.

(46) **(Effective for taxes imposed for taxable years beginning before July 1, 2018)** Real property that is occupied by a charter school and is wholly and exclusively used for educational purposes as defined in G.S. 105-278.4(f) regardless of the ownership of the property.

(46) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2018)** Real and personal property that is occupied by a charter school and is wholly and exclusively used for educational purposes as defined in G.S. 105-278.4(f), regardless of the ownership of the property.

(47) Energy mineral interest in property for which a permit has not been issued under G.S. 113-395. For the purposes of this subdivision, "energy mineral" has the same meaning as in G.S. 105-187.76.

(48) Real and personal property located on lands held in trust by the United States for the Eastern Band of Cherokee Indians, regardless of ownership.

(49) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2018)** A mobile classroom or modular unit that is occupied by a school and is wholly and exclusively used for educational purposes, as defined in G.S. 105-278.4(f), regardless of the ownership of the property. For the purposes of this subdivision, the term "school" means a public school, including any school operated by a local board of education in a local school administrative unit; a regional school; a nonprofit nonpublic school regulated under Article 39 of Chapter 115C of the General Statutes; or a community college established

under Article 2 of Chapter 115D of the General Statutes. (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, s. 1; 1975, cc. 566, 755; c. 764, s. 6; 1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17; 1987 (Reg. Sess., 1988), c. 1041, s. 1.1; 1989, c. 148, s. 4; c. 168, s. 6; c. 705; c. 723, s. 1; c. 727, ss. 28, 29; 1991, c. 717, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 2; 1993, c. 459, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 39; 1995, c. 41, s. 2; c. 509, s. 51; 1995 (Reg. Sess., 1996), c. 646, s. 12; 1997-23, ss. 1, 3, 9; 1997-443, s. 11A.119(a); 1997-456, s. 27; 1998-55, ss. 10, 18; 1998-212, s. 29A.18(a); 1999-337, s. 35(a); 2000-2, s. 1; 2000-18, s. 1, 2000-140, ss. 71, 72(a); 2001-84, s. 3; 2001-427, s. 15(a); 2001-474, s. 8; 2002-104, s. 1; 2003-284, s. 43A.1; 2007-477, s. 1; 2007-527, s. 37; 2008-35, s. 2.1; 2008-107, s. 28.11(a); 2008-134, s. 72; 2008-144, s. 1; 2008-146, ss. 4.1, 5.1; 2008-171, ss. 7(a), (b); 2009-445, s. 21; 2010-95, s. 15; 2011-123, s. 1; 2011-274, s. 1; 2012-120, s. 1(a); 2013-259, s. 1; 2013-355, s. 3; 2013-375, s. 3(a); 2014-4, s. 18; 2015-241, s. 14.30(u); 2015-262, s. 1(a); 2016-94, s. 38.6(a); 2017-204, s. 5.4(a); 2018-98, s. 1(a); 2018-114, s. 25(a).)

§ 105-275.1: Repealed by Session Laws 2001-424, s. 34.15, as amended by Session Laws 2002-126, 30A.1, effective July 1, 2002.

§ 105-275.2: Repealed by Session Laws 2001-424, s. 34.15, as amended by Session Laws 2002-126, 30A.1, effective July 1, 2002.

§ 105-276. Taxation of intangible personal property.

Intangible personal property that is not excluded from taxation under G.S. 105-275 is subject to this Subchapter. The exclusion of a class of intangible personal property from taxation under G.S. 105-275 does not affect the appraisal or assessment of real property and tangible personal property. (1939, c. 310, s. 601; 1971, c. 806, s. 1; 1973, c. 1180; 1985, c. 656, s. 38; 1987, c. 813, s. 8; 1995, c. 41, s. 6; 1997-23, s. 2.)

§ 105-277. Property classified for taxation at reduced rates; certain deductions.

(a) through (c) Repealed by Session Laws 1987, c. 813, s. 9, effective for taxable years beginning on or after January 1, 1988.

(d) All bona fide indebtedness incurred in the purchase of fertilizer and fertilizer materials owing by a taxpayer as principal debtor may be deducted from the total value of all fertilizer and fertilizer materials as are held by such taxpayer for his own use in agriculture during the current year.

(e) Repealed by Session Laws 1987, c. 813, s. 9, effective for taxable years beginning on or after January 1, 1988.

(f) Repealed by Session Laws 1977, c. 869, s. 1.

(g) Buildings equipped with a solar energy heating or cooling system, or both, are hereby designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Such buildings shall be assessed for taxation in accordance with each county's schedules of value for buildings equipped with conventional heating or cooling systems and no additional value shall be assigned for the difference in cost between a solar energy heating or cooling system and a conventional system typically found in the county. As used in this classification, the term "system" includes all controls, tanks, pumps, heat exchangers and other equipment used directly and exclusively for the conversion of solar energy for heating or cooling. The term "system" does not include any land or structural elements of the building such as walls and roofs nor other equipment ordinarily contained in the structure.

(h) Private Water Companies. – Contributions in aid of construction and acquisition adjustments. In assessing the property of any private water company, there shall be excluded that portion of the investment of the company represented by contributions in aid of construction and by acquisition adjustments which is designated a special class of property under Article V, Sec. 2(2) of the Constitution. "Investment," "contributions in aid of construction" and "acquisition adjustment" shall have the meanings as those terms are defined in the Uniform System of Accounts specified by the North Carolina Utilities Commission for use by such private water company.

(i) Repealed by Session Laws 1987, c. 622, s. 5. (1947, c. 1026; 1955, c. 697, s. 1; 1961, c. 1169, ss. 6, 7, 71/2; 1963, c. 940; 1971, c. 806, s. 1; 1973, c. 511, s. 4; c. 695, s. 2; 1975, c. 578; 1977, c. 869, s. 1; c. 965; 1979, c. 605, s. 1; 1985, c. 440; c. 656, ss. 52, 52.1; 1985 (Reg. Sess., 1986), c. 947, s. 5; 1987, c. 622, s. 5; c. 813, s. 9; 2003-416, s. 20.)

§ 105-277.001: Repealed by Session Laws 2001-424, s. 34.15, as amended by Session Laws 2002-126, 30A.1, effective July 1, 2002.

§ 105-277.01. Certain farm products classified for taxation at reduced valuation.

Farm products (including crops but excluding poultry and other livestock) held by or for a cooperative stabilization or marketing association or corporation to which they have been delivered, conveyed, or assigned by the original producer for the purpose of sale are hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Before being assessed for taxation the appraised valuation of farm products so classified shall be reduced by the amount of any unpaid loan or advance made or granted thereon by the United States government, an agency of the United States government, or a cooperative stabilization or marketing association or corporation. (1973, c. 695, s. 3.)

§ 105-277.02. (For effective date, see editor's note) Certain real property held for sale classified for taxation at reduced valuation.

(a) Residential Real Property. – Residential real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "residential real property" is real property that is intended to be sold and used as an individual's residence immediately or after construction of a residence, and the term excludes property that is either occupied by a tenant or used for commercial purposes such as residences shown to prospective buyers

as models. Any increase in value of this classified property attributable to subdivision of, improvements other than buildings, or the construction of either a new single-family residence or a duplex on the property by the builder is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. In no event shall this exclusion extend for more than three years from the time the improved property was first subject to being listed for taxation by the builder.

(b) Commercial Property. – Commercial real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "commercial real property" is real property that is intended to be sold and used for commercial purposes immediately or after improvement. Any increase in value of this classified property attributable to subdivision of or other improvements made to the property, by the builder, is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. The exclusion authorized by this subsection ends at the earlier of the following:

(1) Five years from the time the improved property was first subject to being listed for taxation by the builder.
(2) Issuance of a building permit.
(3) Sale of the property.

(c) The builder must apply for any exclusion under this section annually as provided in G.S. 105-282.1.

(d) In appraising property classified under this section, the assessor shall specify what portion of the value is an increase attributable to subdivision or other improvement by the builder. (2015-223, s. 2.)

§ 105-277.1. Elderly or disabled property tax homestead exclusion.

(a) Exclusion. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The amount of the appraised value of the residence equal to the exclusion amount is excluded from taxation. The exclusion amount is the greater of twenty five thousand dollars ($25,000) or fifty percent (50%) of the appraised value of the residence. An owner who receives an exclusion under this section may not receive other property tax relief.

A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.
(2) Has an income for the preceding calendar year of not more than the income eligibility limit.
(3) Is a North Carolina resident.

(a1) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(a2) Income Eligibility Limit. – For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, 2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year.

(b) Definitions. – The following definitions apply in this section:

(1) Code. – The Internal Revenue Code, as defined in G.S. 105-228.90.

(1a) Income. – All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. – A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(2) Repealed by Session Laws 1993, c. 360, s. 1.

(2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.

(3) Permanent residence. – A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(3a) Property tax relief. – The property tax homestead exclusion provided in this section, the property tax homestead circuit breaker provided in G.S. 105-277.1B, or the disabled veteran property tax homestead exclusion provided in G.S. 105-277.1C.

(4) Totally and permanently disabled. – A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(c) Application. – An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner must apply separately for his or her proportionate share of the exclusion.

(1) Elderly Applicants. – Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. – Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof must be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, the applicant is not required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.

(d) Ownership by Spouses. – A permanent residence owned and occupied by husband and wife is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section.

(e) Other Multiple Owners. – This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1C, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1C, each co-owner who qualifies for the exclusion under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1C. (1971, c. 932, s. 1; 1973, c. 448, s. 1; 1975, c. 881, s. 2; 1977, c. 666, s. 1; 1979, c. 356, s. 1; c. 846, s. 1; 1981, c. 54, s. 1; c. 1052, s. 1; 1985, c. 656, ss. 44, 45; 1985 (Reg. Sess., 1986), c. 982, ss. 19, 20; 1987, c. 45, s. 1; 1993, c. 360, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 15.1(a); 2001-308, s. 1; 2007-484, s. 43.7T(a), (b); 2007-497, ss. 1.1, 2.1, 2.2; 2008-35, s. 3; 2008-107, s. 28.11(c)-(f), (i); 2009-445, s. 22(a).)

§ 105-277.1A: Repealed by Session Laws 2001-424, s. 34.15, as amended by Session Laws 2002-126, 30A.1, effective July 1, 2002.

§ 105-277.1B. Property tax homestead circuit breaker.

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned the property as a permanent residence for at least five consecutive years and has occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the length of occupancy and ownership requirements and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of the principal amount of tax that is imposed for the current tax year on his or her permanent residence and exceeds the percentage of the qualifying owner's income set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	**Income Up To**	**Percentage**
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event described in subsection (i) of this section. On or before September 1 of each year, the collector must send to the mailing address of a residence on which taxes have been deferred a notice stating the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

(i) Disqualifying Events. – Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that

individual occupies or continues to occupy the property as his or her permanent residence.

(2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(3) The owner ceases to use the property as a permanent residence.

(j) Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the deferred taxes are carried forward and are not due and payable until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral and a disqualifying event occurs, the years in which the owner did not qualify are disregarded in determining the preceding three years for which the deferred taxes are due and payable.

(k) Repealed by Session Laws 2008-35, s. 1.2, effective July 1, 2008.

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1. (2007-484, s. 43.7T(b); 2007-497, s. 2.3; 2008-35, s. 1.2; 2009-445, s. 22(b).)

§ 105-277.1C. Disabled veteran property tax homestead exclusion.

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The first forty-five thousand dollars ($45,000) of appraised value of the residence is excluded from taxation. A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

(b) Definitions. – The following definitions apply in this section:

(1) Disabled veteran. – A veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed

by this section is claimed, he or she has a service-connected, permanent, and total disability.

c. The veteran is deceased and the United States Department of Veterans Affairs or another federal agency has certified that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran's death was the result of a service-connected condition.

(2) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(3) Permanent residence. – Defined in G.S. 105-277.1.

(4) Property tax relief. – Defined in G.S. 105-277.1.

(4a) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

(5), (6) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(7) Service-connected. – Defined in 38 U.S.C. § 101.

(c) Temporary Absence. – An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Ownership by Spouses – A permanent residence owned and occupied by husband and wife is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the requirements of this section.

(e) Other Multiple Owners. – This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(f) Application. – An application for the exclusion allowed under this section should be filed during the regular listing period, but may be filed and must be accepted at any time

up to and through June 1 preceding the tax year for which the exclusion is claimed. An applicant for an exclusion under this section must establish eligibility for the exclusion by providing a copy of the veteran's disability certification or evidence of benefits received under 38 U.S.C. § 2101. (2008-107, s. 28.11(b); 2009-445, s. 22(c); 2010-95, s. 16; 2010-96, s. 41.)

§ 105-277.1D. (See note for repeal.) Inventory property tax deferral.

(a) Classification. – A residence constructed by a builder and owned by the builder or a business entity of which the builder is a member, as defined in G.S. 105-277.2, is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable in accordance with this section. For purposes of this section, a "residence" is an improvement, other than remodeling, renovating, rehabilitating, or refinishing, by a builder to real property that is intended to be sold and used as an individual's residence, that is unoccupied, and for which a certificate of occupancy authorized by law has been issued.

(b) Deferred Taxes. – An owner may defer the portion of tax imposed on real property that represents the increase in value of the property attributable solely to improvements resulting from the construction by the builder of a residence on the property. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral because of the occurrence of a disqualifying event. A disqualifying event occurs at the earliest of (i) when the owner transfers the residence, (ii) when the residence is occupied by the owner or by someone other than the owner with the owner's consent, (iii) five years from the time the improved property was first subject to being listed for taxation by the owner, or (iv) three years from the time the improved property first received the property tax benefit provided by this section. On or before September 1 of each year, the collector shall notify each owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(c) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(d) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(e) Application. – An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application

approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1. (2009-308, s. 2; 2010-140, s. 1.)

§ 105-277.1E. Reserved for future codification purposes.

§ 105-277.1F. Uniform provisions for payment of deferred taxes.

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

(1) G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area.

(1a) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(2a) **(See note for repeal)** G.S. 105-277.1D, the inventory property tax deferral.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(4a) G.S. 105-277.15, wildlife conservation land.

(4b) G.S. 105-277.15A, site infrastructure land.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(b) Payment. – Taxes deferred on property under a deferral program listed in subsection (a) of this section are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event. If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable. Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year. A lien for deferred taxes is extinguished when the taxes are paid.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest. (2008-35, s. 2.2; 2008-107, s. 28.11(h); 2008-171, s. 2; 2009-308, s. 3; 2011-274, s. 2; 2012-79, s. 1.9; 2013-130, s. 3.)

§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

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

and managing of horses. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

(1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land.

(4) Individually owned. – Owned by one of the following:

a. An individual.

b. A business entity that meets all of the following conditions:

1. Its principal business is farming agricultural land, horticultural land, or forestland. When determining whether an applicant under G.S. 105-277.4 has as its principal business farming agricultural land, horticultural land, or forestland, the assessor

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

2. All of its members are, directly or indirectly, individuals who are actively engaged in farming agricultural land, horticultural land, or forestland or a relative of one of the individuals who is actively engaged. An individual is indirectly a member of a business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.
3. It is not a corporation whose shares are publicly traded, and none of its members are corporations whose shares are publicly traded.
4. If it leases the land, all of its members are individuals and are relatives. Under this condition, "principal business" and "actively engaged" include leasing.

c. A trust that meets all of the following conditions:
1. It was created by an individual who owned the land and transferred the land to the trust.
2. All of its beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust that owns the land if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust that owns the land.

d. A testamentary trust that meets all of the following conditions:
1. It was created by an individual who transferred to the trust land that qualified in that individual's hands for classification under G.S. 105-277.3.
2. At the date of the creator's death, the creator had no relatives.
3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

e. Tenants in common, if each tenant would qualify as an owner if the tenant were the sole owner. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b)

apply to each tenant in common who is an individual, and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity or a trust.

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(5a) Relative. – Any of the following:

a. A spouse or the spouse's lineal ancestor or descendant.

b. A lineal ancestor or a lineal descendant.

c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.

d. An aunt or an uncle.

e. A spouse of an individual listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a). (1973, c. 709, s. 1; 1975, c. 746, s. 1; 1985, c. 628, s. 1; c. 667, ss. 1, 4; 1987, c. 698, s. 1; 1995, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 17; 1998-98, s. 24; 2002-184, s. 1; 2004-8, s. 1; 2005-313, ss. 1, 2; 2008-146, s. 2.1; 2015-263, s. 12(a).)

§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual

production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, grazing fees for livestock, the sale of bees or products derived from beehives other than honey, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.

(2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Individual Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, land owned by an individual must also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, land owned by a business entity must meet the requirements of subdivision (1) of this subsection and land owned by a trust must meet the requirements of subdivision (2) of this subsection.

(1) Land owned by a business entity must have been owned by one or more of the following for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed:

a. The business entity.

b. A member of the business entity.

c. Another business entity whose members include a member of the business entity that currently owns the land.

(2) Land owned by a trust must have been owned by the trust or by one or more of its creators for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exceptions to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

b. The new owner acquires the land and continues to use the land for the purpose for which it was classified under subsection (a) of this section while under previous ownership.

c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for any deferred taxes and intends to continue the present use of the land.

(2) Expansion of existing unit. – Land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a).

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) Conservation Exception. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as (i) the property is subject to a qualifying conservation easement that meets the requirements of G.S. 113A-232, without regard to actual production or income requirements of this section; and (ii) the

taxpayer received no more than seventy-five percent (75%) of the fair market value of the donated property interest in compensation. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to a qualifying conservation easement. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

(d2) Wildlife Exception. – When an owner of land classified under this section does not transfer the land and the land becomes eligible for classification under G.S. 105-277.15, no deferred taxes are due. The deferred taxes remain a lien on the land and are payable in accordance with G.S. 105-277.15.

(d3) Site Infrastructure Exception. – When an owner of land classified under this section (i) does not transfer the land and the land becomes eligible for classification under G.S. 105-277.15A or (ii) does transfer the land but the land becomes eligible for classification under G.S. 105-277.15A within six months of the transfer, no deferred taxes are due. The deferred taxes remain a lien on the land and are payable in accordance with G.S. 105-277.15A.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.
(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.
(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.
(2) Compliance with a set of best management practices.
(3) Compliance with a minimum gross income per acre test.
(4) Evidence of net income from the farm operation.
(5) Evidence that farming is the farm operator's principal source of income.
(6) Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator.

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for

the production and sale of forest products, then the forestland is operated under a sound management program. (1973, c. 709, s. 1; 1975, c. 746, s. 2; 1983, c. 821; c. 826; 1985, c. 667, ss. 2, 3, 6.1; 1987, c. 698, ss. 2-5; 1987 (Reg. Sess., 1988), c. 1044, s. 13.1; 1989, cc. 99, 736, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 29; 1995, c. 454, s. 2; 1997-272, s. 1; 1998-98, s. 22; 2001-499, s. 1; 2002-184, s. 2; 2005-293, s. 1; 2005-313, s. 3; 2007-484, s. 43.7T(c); 2007-497, s. 3.1; 2008-146, s. 2.2; 2008-171, ss. 4, 5; 2011-9, s. 1; 2013-130, s. 2; 2014-3, s. 14.14(a); 2017-108, s. 3(a).)

§ 105-277.4. Agricultural, horticultural and forestland – Application; appraisal at use value; appeal; deferred taxes.

(a) Application. – Property coming within one of the classes defined in G.S. 105-277.3 is eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application must clearly show that the property comes within one of the classes and must also contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An initial application must be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage. An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application as required by subsection (a) of this section, an application may be approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission.

(b) Appraisal at Present-use Value. – Upon receipt of a properly executed application, the assessor must appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor must appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, or is property annexed subject to G.S. 160A-37(f1) or G.S. 160A-49(f1), the assessor must furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. The assessor must also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification. Upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S.160A-49(f1), or any change in the certification, the assessor for

the county where the land subject to the annexation is located must, within 30 days, determine if the land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city.

(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. An appeal must be made within 60 days after the decision of the assessor. If an owner submits additional information to the assessor pursuant to G.S. 105-296(j), the appeal must be made within 60 days after the assessor's decision based on the additional information. Decisions of the county board may be appealed to the Property Tax Commission.

(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification or when an application is not approved.

(d) **(Effective for taxes imposed for taxable years beginning before July 1, 2016)** Exceptions. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present use value classification solely due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

(1) There is a change in income caused by enrollment of the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.

(2) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29).

(3) The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

(d) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2016)** Set Exception. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present use value classification solely due to a change in income caused by enrollment of the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58, then no deferred taxes are due and the lien for the deferred taxes is extinguished.

(d1) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2016)** Variable Exception. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present-use value classification because the property is conveyed to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29) or to the State, a political subdivision of the State, or the United States, then deferred taxes are due as follows:

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

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

(e) Repealed by Session Laws 1997-270, s. 3, effective July 3, 1997.

(f) The Department shall publish a present-use value program guide annually and make the guide available electronically on its Web site. When making decisions regarding the qualifications or appraisal of property under this section, the assessor shall adhere to the Department's present-use value program guide. (1973, c. 709, s. 1; c. 905; c. 906, ss. 1, 2; 1975, c. 62; c. 746, ss. 3-7; 1981, c. 835; 1985, c. 518, s. 1; c. 667, ss. 5, 6; 1987, c. 45, s. 1; c. 295, s. 5; c. 698, s. 6; 1987 (Reg. Sess., 1988), c. 1044, s. 13.2; 1995, c. 443, s. 4; c. 454, s. 3; 1997-270, s. 3; 1998-98, s. 23; 1998-150, s. 1; 2001-499, s. 2; 2002-184, s. 3; 2005-313, s. 4; 2006-30, s. 4; 2008-35, s. 2.3; 2015-263, s. 12(b); 2016-76, s. 1.)

§ 105-277.5. Agricultural, horticultural and forestland – Notice of change in use.

Not later than the close of the listing period following a change which would disqualify all or a part of a tract of land receiving the benefit of this classification, the property owner shall furnish the assessor with complete information regarding such change. Any property owner who fails to notify the assessor of changes as aforesaid regarding land receiving the benefit of this classification shall be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues. (1973, c. 709, s. 1; 1975, c. 746, s. 8; 1987, c. 45, s. 1.)

§ 105-277.6. Agricultural, horticultural and forestland – Appraisal; computation of deferred tax.

(a) In determining the amount of the deferred taxes herein provided, the assessor shall use the appraised valuation established in the county's last general revaluation except for any changes made under the provisions of G.S. 105-287.

(b) In revaluation years, as provided in G.S. 105-286, all property entitled to classification under G.S. 105-277.3 shall be reappraised at its true value in money and at its present use value as of the effective date of the revaluation. The two valuations shall continue in effect and shall provide the basis for deferred taxes until a change in one or both of the appraisals is required by law. The present use-value schedule, standards, and rules shall be used by the tax assessor to appraise property receiving the benefit of this classification until the next general revaluation of real property in the county as required by G.S. 105-286.

(c) Repealed by Session Laws 1987, c. 295, s. 2. (1973, c. 709, s. 1; 1975, c. 746, ss. 9, 10; 1987, c. 45, s. 1, c. 295, s. 2.)

§ 105-277.7. Use-Value Advisory Board.

(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board shall consist of the following additional members, to serve ex officio:

(1) A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.

(2) A representative of the North Carolina Forest Service of the Department of Agriculture and Consumer Services, designated by the Director of that Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm Bureau Federation, Inc., designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(8) A representative of the North Carolina Forestry Association, designated by the President of the Association.

(b) Staff. – The Agricultural Extension Service at North Carolina State University must provide clerical assistance to the Board.

(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic area, and the crop as either agricultural or horticultural. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from contracts with federal or State agencies as needed.

(2) The recommended net income ranges for forestland furnished to the Board by the Forestry Section of the North Carolina Cooperative Extension Service. These net income ranges may be based on up to six classes of land within each Major Land Resource Area designated by the United States Soil Conservation Service. In developing these ranges, the Forestry Section must consider the soil productivity and indicator tree species or stand type, the average stand establishment and annual management costs, the average rotation length and timber yield, and the average timber stumpage prices.

(3) The capitalization rates adopted by the Board prior to February 1 for use in capitalizing incomes into values. The capitalization rate for forestland shall be

nine percent (9%). The capitalization rate for agricultural land and horticultural land must be no less than six percent (6%) and no more than seven percent (7%). The incomes must be in the form of cash rents for agricultural lands and horticultural lands and net incomes for forestlands.

(4) The value per acre adopted by the Board for the best agricultural land. The value may not exceed one thousand two hundred dollars ($1,200).

(5) Recommendations concerning any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land and horticultural land based on a calculation to be determined by the Board. The Board shall annually report these recommendations to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(6) Recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department. (1973, c. 709, s. 1; 1975, c. 746, s. 11; 1985, c. 628, s. 2; 1989, c. 727, s. 218(44); c. 736, s. 2; 1997-261, s. 109; 1997-443, s. 11A.119(a); 2002-184, s. 4; 2005-313, s. 5; 2005-386, s. 1.3; 2011-145, s. 13.25(oo); 2013-155, s. 7.)

§ 105-277.8. Taxation of property of nonprofit homeowners' association.

(a) Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association if each of the following requirements is met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of extraterritorial common property shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection, as determined by the latest schedule of values, shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value. The governing board of a nonprofit homeowners' association with property subject to taxation under this subsection shall provide annually to each member of the

association the amount of tax due on the property, the value of the property, and, if applicable, the means by which the association will recover the tax due on the property from the members.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code, and "extraterritorial common property" means real property that is (i) owned by a nonprofit homeowners association that meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) entirely contained within a taxing jurisdiction that is different from that of the taxable real property owned by members of the association and providing the appurtenant rights to use and enjoy the association property. (1979, c. 686, s. 1; 1987, c. 130; 2012-157, s. 1.)

§ 105-277.9. Taxation of property inside certain roadway corridors.

Real property that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the appraised value of the property if each of the following requirements is met:

(1) As of January 1, no building or other structure is located on the property.

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor. (1987, c. 747, s. 22; 1998-184, s. 2; 2011-30, s. 1.)

§ 105-277.9A. (See note for repeal) Taxation of improved property inside certain roadway corridors.

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

(b) Sunset. – This section is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2021. (2011-30, s. 2.)

§ 105-277.10. Taxation of precious metals used or held for use directly in manufacturing or processing by a manufacturer.

Precious metals, including rhodium and platinum, used or held for use directly in manufacturing or processing by a manufacturer as part of industrial machinery is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The classified property shall be assessed at the lower of its true value or the manufacturer's original cost less depreciation. The original cost of the classified property shall be adjusted by the index factor, if any, that applies in assessing the industrial machinery with which the property is used, and the depreciable life of the classified

property shall be the life assigned to the industrial machinery with which the property is used. The residual value of the classified property may not exceed twenty-five percent (25%) of the manufacturer's original cost. (1989, c. 674, s. 1.)

§ 105-277.11. Taxation of property subject to a development financing district agreement.

Property that is in a development financing district established pursuant to G.S. 160A-515.1 or G.S. 158-7.3 and that is subject to an agreement entered into pursuant to G.S. 159-108, shall, pursuant to Article V, Section 14 of the North Carolina Constitution, be assessed for taxation at the greater of its true value or the minimum value established in the agreement.(2003-403, s. 21.)

§ 105-277.12. Antique airplanes.

(a) For the purpose of this section, the term "antique airplane" means an airplane that meets all of the following conditions:

(1) It is registered with the Federal Aviation Administration and is a model year 1954 or older.
(2) It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.
(3) It is used only occasionally for other purposes.
(4) It is used by the owner for a purpose other than the production of income.

(b) Antique airplanes are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. An antique airplane shall be assessed at the lower of its true value or five thousand dollars ($5,000). (1997-355, s. 1.)

§ 105-277.13. Taxation of improvements on brownfields.

(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion.

(b) For the purposes of this section, the terms "qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environmental Quality and the owner pursuant to G.S. 130A-310.32.

(c) The following table establishes the percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

Year	Percent of Appraised Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%

Year 5 10%.

(2000-158, s. 1; 2015-241, s. 14.30(u).)

§ 105-277.14. Taxation of working waterfront property.

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

(1) Coastal fishing waters. – Defined in G.S. 113-129.

(2) Commercial fishing operation. – Defined in G.S. 113-168.

(3) Fish processing. – Processing fish, as defined in G.S. 113-129, for sale.

(4) Working waterfront property. – Any of the following property that has, for the most recent three-year period, produced an average gross income of at least one thousand dollars ($1,000):

a. A pier that extends into coastal fishing waters and limits access to those who pay a fee.

b. Real property that is adjacent to coastal fishing waters and is primarily used for a commercial fishing operation or fish processing, including adjacent land that is under improvements used for one of these purposes.

(b) Classification. – Working waterfront property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed on the basis of the value of the property in its present use rather than on its true value. Working waterfront property includes land reasonably necessary for the convenient use of the property.

(c) Deferred Taxes. – The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as working waterfront property.

(d) Repealed by Session Laws 2009-445, s. 23(b), effective August 7, 2009. (2007-485, s. 1; 2008-35, s. 2.4; 2009-445, s. 23(b).)

§ 105-277.15. Taxation of wildlife conservation land.

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

(1) Business entity. – Defined in G.S. 105-277.2.

(2) Family business entity. – A business entity whose members are, directly or indirectly, individuals and are relatives. An individual is indirectly a member of a business entity if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity.

(3) Family trust. – A trust that was created by an individual and whose beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust.

(4) Member. – Defined in G.S. 105-277.2.

(5) Relative. – Defined in G.S. 105-277.2.

(b) Classification. – Wildlife conservation land is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section. Wildlife conservation land classified under this section must be appraised and assessed as if it were classified under G.S. 105-277.3 as agricultural land.

(c) Requirements. – Land qualifies as wildlife conservation land if it meets the following size, ownership, and use requirements:

(1) Size. – The land must consist of at least 20 contiguous acres.

(2) Ownership. – The land must be owned by an individual, a family business entity, or a family trust and must have been owned by the same owner for the previous five years, except as follows:

a. If the land is owned by a family business entity, the land meets the ownership requirement if the land was owned by one or more members of the family business entity for the required time.

b. If the land is owned by a family trust, the land meets the ownership requirement if the land was owned by one or more beneficiaries of the family trust for the required time.

c. If an owner acquires land that was classified as wildlife conservation land under this section when it was acquired and the owner continues to use the land as wildlife conservation land, then the land meets the ownership requirement if the new owner files an application and signs the wildlife habitat conservation agreement in effect for the property within 60 days after acquiring the property.

(3) **(Effective for taxes imposed for taxable years beginning before July 1, 2019)** Use. – The land must meet all of the following requirements:

a. The land must be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission that is in effect as of January 1 of the year for which the benefit of this section is claimed and that requires the owner to do one or more of the following:

1. Protect an animal species that lives on the land and, as of January 1 of the year for which the benefit of this section is claimed, is on a North Carolina protected animal list published by the Commission under G.S. 113-333.

2. Conserve any of the following priority animal wildlife habitats: longleaf pine forest, early successional habitat, small wetland community, stream and riparian zone, rock outcrop, or bat cave.

b. It must have been classified under G.S. 105-277.3 when the wildlife habitat conservation agreement was signed or the owner must demonstrate to both the Wildlife Resources Commission and the assessor that the owner used the land for a purpose specified in the signed wildlife habitat conservation agreement for three years preceding the January 1 of the year for which the benefit of this section is claimed.

(3) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2019)** Use. – The land must meet all of the following requirements:

a. The land must be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission that is in effect as of January 1 of the year for which the benefit of this section is claimed and that requires the owner to do one or more of the following:

1. Protect an animal species that lives on the land and, as of January 1 of the year for which the benefit of this section is claimed, is on a North Carolina protected animal list published by the Commission under G.S. 113-333.
2. Conserve any of the following priority animal wildlife habitats: longleaf pine forest, early successional habitat, small wetland community, stream and riparian zone, rock outcrop, or bat cave.
3. Create and actively and regularly use as a reserve for hunting, fishing, shooting, wildlife observation, or wildlife activities, provided that the land is inspected by a certified wildlife biologist at least quintennially to ensure that at least three of the seven activities listed in this sub-sub-subdivision are maintained to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation. The Commission shall adopt rules needed to administer the inspection requirements of and activities mandated by this sub-sub-subdivision. [The activities are as follows:]
   I. Supplemental food.
   II. Supplemental water.
   III. Supplemental shelter.
   IV. Habitat control.
   V. Erosion control.
   VI. Predator control.
   VII. Census of animal population on the land.

b. For land used pursuant to sub-sub-subdivisions 1. or 2. of sub-subdivision a. of this subdivision, it must have been classified under G.S. 105-277.3 when the wildlife habitat conservation agreement was signed or the owner must demonstrate to both the Wildlife Resources Commission and the assessor that the owner used the land for a purpose specified in the signed wildlife habitat conservation agreement for three years preceding the January 1 of the year for which the benefit of this section is claimed.

(d) **(Effective for taxes imposed for taxable years beginning before July 1, 2019)** Restrictions. – The following restrictions apply to the classification allowed under this section:

(1) No more than 100 acres of an owner's land in a county may be classified under this section.

(2) Land owned by a business entity is not eligible for classification under this section if the business entity is a corporation whose shares are publicly traded or one of its members is a corporation whose shares are publicly traded.

(d) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2019)** Restrictions. – The following restrictions apply to the classification allowed under this section:

(1) For land used pursuant to sub-sub-subdivision 3. of sub-subdivision a. of subdivision (3) of subsection (c) of this section, no more than 800 acres of an owner's land in a county may be classified under this section. For all other land classified under this section, no more than 100 acres of an owner's land in a county may be classified under this section.

(2) Land owned by a business entity is not eligible for classification under this section if the business entity is a corporation whose shares are publicly traded or one of its members is a corporation whose shares are publicly traded.

(e) Deferred Taxes. – The difference between the taxes that are due on wildlife conservation land classified under this section and that would be due if the land were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the land loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as wildlife conservation land.

(f) Exceptions to Payment. – No deferred taxes are due in the following circumstances and the deferred taxes remain a lien on the land:

(1) When the owner of wildlife conservation land that was previously classified under G.S. 105-277.3 before the wildlife habitat conservation agreement was signed does not transfer the land and the land again becomes eligible for classification under G.S. 105-277.3. In this circumstance, the deferred taxes are payable in accordance with G.S. 105-277.3.

(2) When land that is classified under this section is transferred to an owner who signed the wildlife habitat conservation agreement in effect for the land at the time of the transfer and the land remains classified under this section. In this circumstance, the deferred taxes are payable in accordance with this section.

(g) Exceptions to Payment and Lien. – Notwithstanding subsection (e) of this section, if land loses its eligibility for deferral solely due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

(1) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base under G.S. 105-275(12) or G.S. 105-275(29).

(2) The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

(h) Administration. – An owner who applies for the classification allowed under this section must attach a copy of the owner's written wildlife habitat agreement required under subsection (c) of this section. An owner who fails to notify the county assessor when land classified under this section loses its eligibility for classification is subject to a penalty in the amount set in G.S. 105-277.5. (2008-171, s. 1; 2018-95, s. 1.)

§ 105-277.15A. Taxation of site infrastructure land.

(a) Classification. – Site infrastructure land is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

(b) **(Effective for taxes imposed for taxable years beginning before July 1, 2015)** Requirements. – Land qualifies as site infrastructure land if it meets the following size and use requirements:

(1) Size. – The land must consist of at least 100 contiguous acres.

(2) Use. – The land must meet all of the following requirements:

a. It must be zoned for industrial use, office use, or both.

b. A building permit for a primary building or structure must not have been issued for the land, and there is no primary building or structure on the land.

c. It must be classified under G.S. 105-277.3 or have been classified under G.S. 105-277.3 within the previous six months.

(b) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Requirements. – Land qualifies as site infrastructure land if it meets the following size and use requirements:

(1) Size. – The land must consist of at least 100 contiguous acres.

(2) Use. – The land must meet all of the following requirements:

a. It must be zoned for industrial use, office use, or both.

b. A building permit for a primary building or structure must not have been issued for the land, and there is no primary building or structure on the land.

(c) **(Effective for taxes imposed for taxable years beginning before July 1, 2015)** Deferred Taxes. – An owner may defer a portion of tax imposed on site infrastructure land that represents the sum of the increase in value of the property attributable solely to improvements made to the site infrastructure land, if any, and the difference between the true value of the site infrastructure land and the value of the site infrastructure land as if it were classified under G.S. 105-277.3 as agricultural land. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section is a lien on the site infrastructure land as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the site infrastructure land loses its eligibility for deferral because of the occurrence of a disqualifying event as follows:

(1) The deferred taxes for the preceding five fiscal years are due and payable when an amount equal to the deferred taxes is not invested in improvements to make the land suitable for industrial use, office use, or both within five years from the first day of the fiscal year the property was classified under this section.

(2) The deferred taxes for the preceding five fiscal years are due and payable when the minimum investment required by subdivision (1) of this subsection is timely made, but the land has been classified under this section for 10 years.

(3) All deferred taxes are due and payable when some or all of the site infrastructure land is rezoned for a use other than for industrial use, office use, or both.

(4) The deferred taxes for the preceding year are due and payable when the land is transferred or when a building permit for a primary building or structure for the land is issued.

(c) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Deferred Taxes. – An owner may defer a portion of tax imposed on site infrastructure land that represents the sum of the following: (i) the increase in value of the property attributable solely to improvements made to the site infrastructure land, if any, and (ii) the difference between the true value of the site infrastructure land as it is currently zoned and the value of the site infrastructure land as if it were zoned the same as it was in the calendar year prior to the time the application for property tax relief under this section was filed.

The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section is a lien on the site infrastructure land as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the site infrastructure land loses its eligibility for deferral because of the occurrence of a disqualifying event as follows:

(1) The deferred taxes for the preceding five fiscal years are due and payable when an amount equal to the deferred taxes is not invested in improvements to make the land suitable for industrial use, office use, or both within five years from the first day of the fiscal year the property was classified under this section.

(2) The deferred taxes for the preceding five fiscal years are due and payable when the minimum investment required by subdivision (1) of this subsection is timely made, but the land has been classified under this section for 10 years.

(3) All deferred taxes are due and payable when some or all of the site infrastructure land is rezoned for a use other than for industrial use, office use, or both.

(4) The deferred taxes for the preceding year are due and payable when the land is transferred or when a building permit for a primary building or structure for the land is issued.

(d) Notice. – On or before September 1 of each year, the collector shall notify each owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest. An owner who fails to notify the county assessor when land classified under this section loses its eligibility for classification is subject to a penalty in the amount set in G.S. 105-277.5.

(e) Exception to Payment. – No deferred taxes are due in the following circumstances, and the deferred taxes remain a lien on the land:

(1) When the owner of site infrastructure land that was previously classified under G.S. 105-277.3 does not transfer the land, and the land again becomes eligible for classification under G.S. 105-277.3. In this circumstance, the deferred taxes are payable in accordance with G.S. 105-277.3.

(2) When a portion of the site infrastructure land is transferred for industrial use, office use, or both or has issued for the land a building permit for a primary building or structure for industrial use, office use, or both, and the remainder of the site infrastructure land no longer meets the size requirement of this section. In this circumstance, the deferred taxes for the remainder are payable in

accordance with this section without application of the size requirement of subdivision (b)(1) of this section.

(f) Application. – An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1. An application for property tax relief provided by this section may not be approved for any portion of site infrastructure land which has previously lost eligibility for the program.

(g) Report. – On August 1 of each year, the Secretary shall report to the Department of Commerce the number and location of site infrastructure lands qualified under this section. (2013-130, s. 1; 2014-39, s. 2(a).)

§ 105-277.16. Taxation of low-income housing property.

A North Carolina low-income housing development to which the North Carolina Housing Finance Agency allocated a federal tax credit under section 42 of the Code is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section. The assessor must use the income approach as the method of valuation for property classified under this section and must take rent restrictions that apply to the property into consideration in determining the income attributable to the property. The assessor may not consider income tax credits received under section 42 of the Code or under G.S. 105-129.42 in determining the income attributable to the property. (2008-146, s. 3.1; 2008-187, s. 47.6.)

§ 105-277.17. Taxation of community land trust property.

(a) Classification. – Community land trust property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

(b) Definitions. – The following definitions apply in this section:

(1) Community land trust developer. – A nonprofit housing development entity that is an exempt organization under section 501(c)(3) of the Code and that transfers community land trust property to a qualifying owner.

(2) Community land trust property. – Improvements to real property that meet all of the following conditions:

a. A fee or leasehold interest in the improvements is transferred subject to resale restrictions contained in a long-term ground lease of not less than 99 years.

b. The community land trust developer retains an interest in the property pursuant to the deed of conveyance or the long-term ground lease.

(3) Ground lease. – A lease between the community land trust developer of a dwelling site, as landlord, and the owner or lessee of a permanent residence constructed on the dwelling site, as tenant. The leasehold interest of the tenant in the dwelling site includes an undivided interest and nonexclusive easement for ingress and egress to the dwelling site and for the use and enjoyment of the common areas and community facilities, if any.

(4) Income. – Defined in G.S. 105-277.1(b).

(5) Initial investment basis. – The most recent sales price, excluding any silent mortgage amount, of community land trust property.

(6) Qualifying owner. – A North Carolina resident who (i) occupies, as owner or lessee, community land trust property as a permanent residence and (ii) is part of a household, the annual income of which at the time of transfer and adjusted for family size is not more than one hundred percent (100%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development.

(7) Resale restrictions. – Binding restrictions that affect the price at which a qualifying owner's interest in community land trust property can be transferred for value to a subsequent qualifying owner or the community land trust developer.

(8) Silent mortgage amount. – The amount of debt incurred by a qualifying owner that is represented by a deed of trust or leasehold deed of trust on community land trust property and that earns no interest and requires no repayment prior to satisfaction of any interest-earning mortgage or a subsequent transfer of the property, whichever occurs first.

(9) Transfer. – Any method of disposing of an interest in real property.

(c) Valuation. – The initial appraised value of community land trust property in the year the property first qualifies for classification under this section is the initial investment basis. In subsequent general reappraisals, the value of the community land trust property shall not exceed the sum of the restricted capital gain amount and the initial investment basis. The restricted capital gain amount is the market value of the community land trust property that would be established for the current general reappraisal if not for this classification (i) adjusted to the maximum sales price permitted pursuant to the resale restrictions effective for a hypothetical sale occurring on the date of reappraisal, if less, and (ii) subtracting the initial investment basis and any silent mortgage amount. (2009-481, s. 1.)

§ 105-278. Historic properties.

(a) Real property designated as a historic property by a local ordinance adopted pursuant to former G.S. 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287.

(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the

classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. In addition to the provisions in G.S. 105-277.1F, no deferred taxes are due and all liens arising under this subsection are extinguished when the property's historical significance is lost or substantially impaired due to fire or other natural disaster. (1977, c. 869, s. 2; 1981, c. 501; 1989, c. 706, s. 3.1; 2005-435, s. 38; 2006-162, s. 28; 2008-35, s. 2.5; 2010-95, s. 17.)

§ 105-278.1. Exemption of real and personal property owned by units of government.

(a) Real and personal property owned by the United States and, by virtue of federal law, not subject to State and local taxes shall be exempted from taxation.

(b) Real and personal property belonging to the State, counties, and municipalities is exempt from taxation.

(c) For purposes of this section:

(1) A specified unit of government (federal, State, or local) includes its departments, institutions, and agencies.

(2) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of State government:

a. The State Marketing Authority established by G.S. 106-529.

b. The Board of Governors of the University of North Carolina incorporated under the provisions of G.S. 116-3 and known as "The University of North Carolina."

c. The North Carolina Museum of Art made an agency of the State under G.S. 140-5.12.

(3) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of local government of this State:

a. An airport authority, board, or commission created as a separate and independent body corporate and politic by an act of the General Assembly.

b. An airport authority, board, or commission created as a separate and independent body corporate and politic by one or more counties or municipalities or combinations thereof under the authority of an act of the General Assembly.

c. A hospital authority created under G.S. 131E-17.

d. A housing authority created under G.S. 157-4 or G.S. 157- 4.1.

e. A municipal parking authority created under G.S. 160-477.

f. A veterans' recreation authority created under G.S. 165-26. (1973, c. 695, s. 4; 1987, c. 777, s. 1; 2005-435, s. 39.)

§ 105-278.2. Burial property.

(a) Real property set apart for burial purposes shall be exempted from taxation unless it is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights therein. No application is required under G.S. 105-282.1 for property exempt under this subsection. A county cannot deny the exemption provided under this subsection to a taxpayer that lacks a survey or plat detailing the exempt property.

(b) Taxable real property set apart for human burial purposes is hereby designated a special class of property under authority of Article V, Section 2(2) of the North Carolina Constitution, and it shall be assessed for taxation taking into consideration the following:

(1) The effect on its value by division and development into burial plots;

(2) Whether it is irrevocably dedicated for human burial purposes by plat recorded with the Register of Deeds in the county in which the land is located; and

(3) Whether the owner is prohibited or restricted by law or otherwise from selling, mortgaging, leasing or encumbering the same.

(c) For purposes of this section, the term "real property" includes land, tombs, vaults, monuments, and mausoleums, and the term "burial" includes entombment. (1973, c. 695, s. 4; 1987, c. 724; 2018-113, s. 15.)

§ 105-278.3. Real and personal property used for religious purposes.

(a) Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for religious purposes as defined in subsection (d)(1), below; or

(2) Occupied gratuitously by one other than the owner and wholly and exclusively used by the occupant for religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes.

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for religious purposes; or

(2) Gratuitously made available to one other than the owner and wholly and exclusively used by the possessor for religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain exemption for their properties:

(1) A congregation, parish, mission, or similar local unit of a church or religious body; or

(2) A conference, association, presbytery, diocese, district, synod, or similar unit comprising local units of a church or religious body.

(d) Within the meaning of this section:

(1) A religious purpose is one that pertains to practicing, teaching, and setting forth a religion. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body. Within the meaning of this section, the ownership and maintenance of a general or promotional office or

headquarters by an owner listed in subdivision (2) of subsection (c), above, is a religious purpose and the ownership and maintenance of residences for clergy, rabbis, priests or nuns assigned to or serving a congregation, parish, mission or similar local unit, or a conference, association, presbytery, diocese, district, synod, province or similar unit of a church or religious body or residences for clergy on furlough or unassigned, is also a religious purpose. However, the ownership and maintenance of residences for other employees is not a religious purpose for either a local unit of a church or a religious body or a conference, association, presbytery, diocese, district, synod, or similar unit of a church or religious body. Provided, however, that where part of property which otherwise qualifies for the exemption provided herein is made available as a residence for an individual who provides guardian, janitorial and custodial services for such property, or who oversees and supervises qualifying activities upon and in connection with said property, the entire property shall be considered as wholly and exclusively used for a religious purpose.

(2) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(3) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.

(4) A literary purpose is one that pertains to letters or literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature.

(5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline.

(6) A scientific purpose is one that yields knowledge systematically through research, experimentation or other work done in one or more of the natural sciences.

(e) **(Repealed effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Notwithstanding the exclusive-use requirement of subsection (a), above, if part of a property that otherwise meets that subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(f) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(g) **(Effective for taxes imposed for taxable years before July 1, 2015)** Notwithstanding the exclusive-use requirement of subsection (a), above, any parking lot wholly owned by an agency listed in subsection (c), above, may be used for parking without removing the tax exemption granted in this section; provided, the total charge for said uses shall not exceed that portion of the actual maintenance expenditures for the parking lot

reasonably estimated to have been made on account of said uses. This subsection shall apply beginning with the taxable year that commences on January 1, 1978.

(g) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** The following exceptions apply to the exclusive-use requirement of subsection (a) of this section:

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

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

(3) A building and the land occupied by the building is exempt from taxation if it is under construction and intended to be wholly and exclusively used by its owner for religious purposes upon completion. For purposes of this subdivision, a building is under construction starting when a building permit is issued and ending at the earlier of (i) 90 days after a certificate of occupancy is issued or (ii) 180 days after the end of active construction. (1973, c. 695, s. 4; c. 1421; 1975, c. 848; 1977, c. 867; 2005-435, s. 59(a); 2015-185, s. 1(a).)

§ 105-278.4. Real and personal property used for educational purposes.

(a) Buildings. – Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if all of the following requirements are met:

(1) Owned by either of the following:

a. An educational institution; or

b. A nonprofit entity for the sole benefit of a constituent or affiliated institution of The University of North Carolina, a nonprofit postsecondary educational institution as described in G.S. 116-280, a North Carolina community college, or a combination of these;

(2) The owner is not organized or operated for profit and no officer, shareholder, member, or employee of the owner or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services;

(3) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(4) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution and wholly and exclusively used by the occupant for nonprofit educational purposes.

(b) Land. – Land (exclusive of improvements); and improvements other than buildings, the land actually occupied by such improvements, and additional land reasonably necessary for the convenient use of any such improvement shall be exempted from taxation if:

(1) Owned by an educational institution that owns real property entitled to exemption under the provisions of subsection (a), above;

(2) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(3) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution (as defined herein) and wholly and exclusively used by the occupant for nonprofit educational purposes.

(c) Partial Exemption. – Notwithstanding the exclusive-use requirements of subsections (a) and (b), above, if part of a property that otherwise meets the requirements of one of those subsections is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(d) Public Use. – The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, does not defeat the exemption granted by this section.

(e) Personal Property. – Personal property owned by a church, a religious body, or an educational institution shall be exempted from taxation if:

(1) The owner is not organized or operated for profit, and no officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and

(2) Used wholly and exclusively for educational purposes by the owner or held gratuitously by a church, religious body, or nonprofit educational institution other than the owner, and wholly and exclusively used for nonprofit educational purposes by the possessor.

(f) Definitions. – The following definitions apply in this section:

(1) Educational institution. – The term includes a university, a college, a school, a seminary, an academy, an industrial school, a public library, a museum, and similar institutions.

(2) Educational purpose. – A purpose that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons. The operation of a student housing facility, a student dining facility, a golf course, a tennis court, a sports arena, a similar sport property, or a similar recreational sport property for the use of students or faculty is also an educational purpose, regardless of the extent to which the property is also available to and patronized by the general public. (1973, c. 695, s. 4; 1991 (Reg. Sess., 1992), c. 926, s. 1; 2004-173, s. 1; 2011-145, s. 9.18(f).)

§ 105-278.5. Real and personal property of religious educational assemblies used for religious and educational purposes.

(a) Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building or for the religious educational programs of the owner, shall be exempted from taxation if:

(1) Owned by a religious educational assembly, retreat, or similar organization;
(2) No officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and
(3) Of a kind commonly employed in those activities naturally and properly incident to the operation of a religious educational assembly such as the owner; and
(4) Wholly and exclusively used for
a. Religious worship or
b. Purposes of instruction in religious education.

(b) Notwithstanding the exclusive-use requirement of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Personal property owned by a religious educational assembly, retreat, or similar organization shall be exempted from taxation if it is exclusively maintained and used in connection with real property granted exemption under the provisions of subsection (a) or (b), above. (1973, c. 695, s. 4.)

§ 105-278.6. Real and personal property used for charitable purposes.

(a) Real and personal property owned by:
(1) A Young Men's Christian Association or similar organization;
(2) A home for the aged, sick, or infirm;
(3) An orphanage or similar home;
(4) A Society for the Prevention of Cruelty to Animals;
(5) A reformatory or correctional institution;
(6) A monastery, convent, or nunnery;
(7) A nonprofit, life-saving, first aid, or rescue squad organization;
(8) A nonprofit organization providing housing for individuals or families with low or moderate incomes

shall be exempted from taxation if: (i) As to real property, it is actually and exclusively occupied and used, and as to personal property, it is entirely and completely used, by the owner for charitable purposes; and (ii) the owner is not organized or operated for profit.

(b) A charitable purpose within the meaning of this section is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Notwithstanding the exclusive-use requirements of this section, if part of a property that otherwise meets the section's requirements is used for a purpose that would

require exemption under subsection (a), above, if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than 10 years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property was not used for low- or moderate-income housing within 10 years from the first day of the fiscal year the property was classified under this subsection. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished when the property is used for low- or moderate-income housing within the time period allowed under this subsection. (1973, c. 695, s. 4; 1975, c. 808; 1993, c. 230, s. 1; 2008-35, s. 2.6; 2009-481, s. 2; 2010-95, s. 18; 2011-368, s. 1.)

§ 105-278.6A. Qualified retirement facility.

(a) Classification. – Buildings, the land they actually occupy, additional adjacent land reasonably necessary for the convenient use of the buildings, and personal property owned by a qualified retirement facility and used in the operation of that facility are designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and are excluded from taxation to the extent provided in this section.

(b) Definitions. – The following definitions apply in section:

(1) Charity care. – The unreimbursed costs to the facility of providing health care, housing, or other services to a resident who is uninsured, underinsured, or otherwise unable to pay for all or part of the services rendered.

(2) Community benefits. – The unreimbursed costs to the facility of providing the following:

a. Services, including health, recreation, community research, and education activities provided to the community at large, including the elderly.

b. Charitable donations.

c. Donated volunteer services.

d. Donations and voluntary payments to government agencies.

(3) Financial reporting period. – The calendar year or tax year ending prior to the date the retirement facility applies for an exclusion under this section.

(4) Resident revenue. – Annual revenue paid by a resident for goods and services and one year's share of the initial resident fee amortized in accordance with generally accepted accounting principles.

(5) Retirement facility. – A community that meets all of the following conditions:

a. It is licensed under Article 64 of Chapter 58 of the General Statutes.

b. It is designed for elderly residents.

c. It includes independent living units for elderly residents.

d. It includes a skilled nursing facility or an adult care facility.

(6) Unreimbursed costs. – The costs a facility incurs for providing charity care or community benefits after subtracting payment or reimbursement received from any source for the care or benefits. Unreimbursed costs include costs paid from funds generated by a program described in subdivision (c)(5) of this section.

(c) Total Exclusion. – A retirement facility qualifies for total exclusion under this section if it meets all of the following conditions:

(1) It is exempt from tax under Article 4 of this Chapter and private shareholders do not benefit from its operations.

(2) All of its revenues, less operating and capital expenses, are applied to providing uncompensated goods and services to the elderly and to the local community, or are applied to an endowment or a reserve for these purposes.

(3) Its charter provides that in the event of dissolution, its assets will revert or be conveyed to an entity that is organized exclusively for charitable, educational, scientific, or religious purposes, and is an exempt organization under section 501(c)(3) of the Code.

(4) Repealed by Session Laws 2001-17, s. 1, effective July 1, 2001.

(5) It has an active program to generate funds through one or more sources, such as gifts, grants, trusts, devises, endowment, or an annual giving program, to assist the retirement facility in serving persons who might not be able to reside there without financial assistance or subsidy.

(6) It meets at least one of the following conditions:

a. The facility serves all residents without regard to the residents' ability to pay.

b. At least five percent (5%) of the facility's resident revenue for the financial reporting period is provided in charity care to its residents, in community benefits, or in both.

(d) Partial Exclusion. – A retirement facility qualifies for a partial exclusion under this subsection if it meets conditions under subdivisions (c) (1) through (c)(5) of this section and at least one percent (1%) of the facility's resident revenue for the financial reporting period is provided in charity care to its residents, in community benefits, or in both. The percentage of the retirement facility's assessed value that is excluded from taxation is the applicable percentage provided in the following table, based on the minimum percentage of the facility's resident revenue that it provides in charity care to its residents, in community benefits, or in both:

Partial Exclusion	Minimum Percentage of Resident Revenue
80%	4%
60%	3%
40%	2%
20%	1%

(e) Application for Exclusion. – The application requirements of G.S. 105-282.1 apply to this section. (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, s. 1; 1975, cc. 566, 755; c. 764, s. 6;

1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17; 1987 (Reg. Sess., 1988), c. 1041, s. 1.1; 1989, c. 148, s. 4; c. 168, s. 6; c. 705; c. 723, s. 1; c. 727, ss. 28, 29; 1991, c. 717, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 2; 1993, c. 459, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 39; 1995, c. 41, s. 2; c. 509, s. 51; 1995 (Reg. Sess., 1996), c. 646, s. 12; 1997-23, ss. 1, 3, 9; 1997-443, s. 11A.119(a); 1997-456, s. 27; 1998-55, ss. 10, 18; 1998-212, s. 29A.18(a); 1999-191, s. 1; 2000-20, s. 2; 2001-17, s. 1; 2011-284, s. 70.)

§ 105-278.7. Real and personal property used for educational, scientific, literary, or charitable purposes.

(a) Buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection (f), below; or

(2) Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, charitable, or cultural purposes.

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes; or

(2) Gratuitously made available to an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the possessor for nonprofit educational, scientific, literary, or charitable purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain property tax exemption under this section:

(1) A charitable association or institution,

(2) An historical association or institution,

(3) A veterans' organization or association,

(4) A scientific association or institution,

(5) A literary association or institution,

(6) A benevolent association or institution, or

(7) A nonprofit community or neighborhood organization.

(d) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(f) Within the meaning of this section:

(1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.

(2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.

(3) A literary purpose is one that pertains to letters or literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature.

(4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline. (1973, c. 695, s. 4; 1995 (Reg. Sess., 1996), c. 646, s. 15; 2005-435, ss. 59(b), 59(c).)

§ 105-278.8. Real and personal property used for charitable hospital purposes.

(a) Real and personal property held for or owned by a hospital organized and operated as a nonstock, nonprofit, charitable institution (without profit to members or their successors) shall be exempted from taxation if actually and exclusively used for charitable hospital purposes.

(b) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets that subsection's requirements is used for a purpose that would require exemption under that subsection if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(c) Within the meaning of this section, a charitable hospital purpose is a hospital purpose that has humane and philanthropic objectives; it is a hospital activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. However, the fact that a qualifying hospital charges patients who are able to pay for services rendered does not defeat the exemption granted by this section. (1973, c. 695, s. 4.)

§ 105-278.9. Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 21.

§ 105-279. Repealed by Session Laws 1981, c. 819, s. 2.

§ 105-280. Repealed by Session Laws 1973, c. 695, s. 4.

§ 105-281. Repealed by Session Laws 1973, c. 695, s. 10.

§ 105-282. Repealed by Session Laws 1973, c. 695, s. 8.

§ 105-282.1. Applications for property tax exemption or exclusion; annual review of property exempted or excluded from property tax.

(a) Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

Except as provided below, an owner claiming an exemption or exclusion from property taxes must file an application for the exemption or exclusion annually during the listing period:

(1) No application required. – Owners of the following exempt or excluded property do not need to file an application for the exemption or exclusion to be entitled to receive it:

a. Property exempt from taxation under G.S. 105-278.1 or G.S. 105-278.2.

b. Special classes of property excluded from taxation under G.S. 105-275(15), (16), (26), (31), (32a), (33), (34), (37), (40), (42), or (44).

c. Property classified for taxation at a reduced valuation under G.S. 105-277(g) or G.S. 105-277.9.

(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit. [The properties are as follows:]

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), (45), (46), (47), (48), or (49) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, 105-277.15, 105-277.17, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008.

(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

(b) Approval and Appeal Process. – The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted must review the application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.

If an assessor denies an application for exemption or exclusion, the assessor must notify the owner of the decision and the owner may appeal the decision to the board of equalization and review or the board of county commissioners, as appropriate, and from the county board to the Property Tax Commission. If the notice of denial covers property located within a municipality, the assessor shall send a copy of the notice and a copy of the application to the governing body of the municipality. The municipal governing body shall then advise the owner whether it will adopt the decision of the county board or require the owner to file a separate appeal with the municipal governing body. In the event the owner is required to appeal to the municipal governing body and that body renders an adverse decision, the owner may appeal to the Property Tax Commission. Nothing in this subsection shall prevent the governing body of a municipality from denying an application which has been approved by the assessor or by the county board provided the owner's rights to notice and hearing are not abridged. Applications handled separately by a municipality shall be filed in the office of the person designated by the governing body, or in the absence of such designation, in the office of the chief fiscal officer of the municipality.

(c) Discovery of Property. – When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs.

(d) Roster of Exempted and Excluded Property. – The assessor shall prepare and maintain a roster of all property in the county that is granted tax relief through classification or exemption. On or before November 1 of each year, the assessor must send a report to the Department of Revenue summarizing the information contained in the roster. The report must be in the format required by the Department. The assessor must also send the Department a copy of the roster upon the request of the Department. As to affected real and personal property, the roster shall set forth:

(1) The name of the owner of the property.
(2) A brief description of the property.
(3) A statement of the use to which the property is put.
(4) A statement of the value of the property.
(5) The total value of exempt property in the county and in each municipality therein.

(e) Annual Review of Exempted or Excluded Property. – Pursuant to G.S. 105-296(*l*), the assessor must annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that the parcels qualify for the exemption or exclusion. (1973, c. 695, s. 8; c. 1252; 1981, c. 54, ss. 2, 3; c. 86, s. 2; c. 915; 1985 (Reg. Sess., 1986), c. 982, s. 22; 1987, c. 45, s. 1; c. 295, ss. 5, 6; c. 680, ss. 1-3; c. 813, s. 13; 1989, c. 674, s. 2; c. 723, s. 2; 1991, c. 34, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 3; 1993, c. 459, s. 3; 1995, c. 41, s. 7; 1995 (Reg. Sess., 1996), c. 646, s. 16; 1997-23, s. 4; 2000-140, s. 72(b); 2001-139, s. 1; 2007-484, s. 43.7T(b); 2007-497, s. 2.4; 2008-35, s. 1.3; 2008-107, s. 28.11(g); 2008-171, ss. 3, 7(c); 2009-445, s. 23(a), (c)-(e); 2009-481, s. 3; 2018-5, s. 38.10(d).)

§§ 105-282.2 through 105-282.6. Reserved for future codification purposes.

Article 12A.

Taxation of Lessees and Users of Tax-Exempt Cropland or Forestland.

§ 105-282.7. Taxation of lessees and users of tax-exempt cropland or forestland.

(a) When any cropland or forestland owned by the United States, the State, a county or a municipal corporation is leased, loaned or otherwise made available to and used by a person, as defined in G.S. 105-273(12), in connection with a business conducted for profit, the lessee or user of the property is subject to taxation to the same extent as if the lessee or user owned the property. As used in this section, "forestland" has the same meaning as in G.S. 105-277.2(2), and "cropland" means agricultural land and horticultural land as defined in G.S. 105-277.2(1) and (3) respectively.

(b) This section does not apply to cropland or forestland for which payments in lieu of taxes are made in amounts equivalent to the amount of tax that could otherwise be lawfully assessed.

(c) Taxes levied pursuant to this Article are levied on the privilege of leasing or otherwise using tax-exempt cropland or forestland in connection with a business conducted for profit. The purpose of these taxes is to eliminate the competitive advantage accruing to profit-making enterprises from the use of tax-exempt property. (1981, c. 819, s. 1.)

§ 105-282.8. Assessment and collection.

The taxes levied under this Article shall be assessed to the lessee or user of the exempt property and shall be collected in the same manner and to the extent as if the lessee or user owned the property. The taxes are a debt due from the lessee or user to the taxing unit in which the property is located and are recoverable as other actions to collect a debt. (1981, c. 819, s. 1.)

Article 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standards.

All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used. For the purposes of this section, the acquisition of an interest in land by an entity having the power of eminent domain with respect to the interest acquired shall not be considered competent evidence of the true value in money of comparable land. (1939, c. 310, s. 500; 1953, c. 970, s. 5; 1955, c. 1100, s. 2; 1959, c. 682; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 11; 1977, 2nd Sess., c. 1297.)

§ 105-284. Uniform assessment standard.

(a) Except as otherwise provided in this section, all property, real and personal, shall be assessed for taxation at its true value or use value as determined under G.S. 105-283 or G.S. 105-277.6, and taxes levied by all counties and municipalities shall be levied uniformly on assessments determined in accordance with this section.

(b) The assessed value of public service company system property subject to appraisal by the Department of Revenue under G.S. 105-335(b)(1) shall be determined by applying to the allocation of such value to each county a percentage to be established by the Department of Revenue. The percentage to be applied shall be either:

(1) The median ratio established in sales assessment ratio studies of real property conducted by the Department of Revenue in the county in the year the county conducts a reappraisal of real property and in the fourth and seventh years thereafter; or

(2) A weighted average percentage based on the median ratio for real property established by the Department of Revenue as provided in subdivision (1) and a one hundred percent (100%) ratio for personal property. No percentage shall be applied in a year in which the median ratio for real property is ninety percent (90%) or greater.

If the median ratio for real property in any county is below ninety percent (90%) and if the county assessor has provided information satisfactory to the Department of Revenue that the county follows accepted guidelines and practices in the assessment of business personal property, the weighted average percentage shall be applied to public service company property. In calculating the weighted average percentage, the Department shall use the assessed value figures for real and personal property reported by the county to the Local Government Commission for the preceding year. In any county which fails to demonstrate that it follows accepted guidelines and practices, the percentage to be applied shall be the median ratio for real property. The percentage established in a year in which a sales assessment ratio study is conducted shall continue to be applied until another study is conducted by the Department of Revenue.

(c) Notice of the median ratio and the percentage to be applied for each county shall be given by the Department of Revenue to the chairman of the board of commissioners not later than April 15 of the year for which it is to be effective. Notice shall also be given at the same time to the public service companies whose property values are subject to adjustment under this section.

Either the county or an affected public service company may challenge the real property ratio or the percentage established by the Department of Revenue by giving notice of exception within 30 days after the mailing of the Department's notice. Upon receipt of such notice of exception, the Department shall arrange a conference with the challenging party or parties to review the matter. Following the conference, the Department shall notify the challenging party or parties of its final determination in the matter. Either party may appeal the Department's determination to the Property Tax Commission by giving notice of appeal within 30 days after the mailing of the Department's decision.

(d) Property that is in a development financing district and that is subject to an agreement entered into pursuant to G.S. 159-108 shall be assessed at its true value or at the minimum value set out in the agreement, whichever is greater.(1939, c. 310, s. 500; 1953, c. 970, s. 5; 1955, c. 1100, s. 2; 1959, c. 682; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 12; 1985, c. 601, s. 1; 1987 (Reg. Sess., 1988), c. 1052, s. 1; 2003-403, s. 20.)

Article 14.

Time for Listing and Appraising Property for Taxation.

§ 105-285. Date as of which property is to be listed and appraised.

(a) Annual Listing Required. – All property subject to ad valorem taxation shall be listed annually.

(b) Personal Property; General Rule. – Except as otherwise provided in this Chapter, the value, ownership, and place of taxation of personal property, both tangible and intangible, shall be determined annually as of January 1.

(c) Repealed by Session Laws 1987, c. 813, s. 12.

(d) Real Property. – The value of real property shall be determined as of January 1 of the years prescribed by G.S. 105-286 and G.S. 105-287. The ownership of real property shall be determined annually as of January 1, except in the following situation: When any real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it shall be listed for taxation by the transferee as of the date of acquisition and shall be appraised in accordance with its true value as of January 1 preceding the date of acquisition; and the property shall be taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired. The person in whose name such property is listed shall have the right to appeal the listing, appraisal, and assessment of the property in the same manner as that provided for listings made as of January 1.

In the event real property exempt as of January 1 is, prior to July 1, acquired from a governmental unit that by contract is making payments in lieu of taxes to the taxing unit for the fiscal period beginning July 1 of the year in which the property is acquired, the tax on such property for the fiscal period beginning on July 1 immediately following acquisition shall be one half of the amount of the tax that would have been imposed if the property had been listed for taxation as of January 1. (1939, c. 310, s. 302; 1945, c. 973; 1971, c. 806, s. 1; 1973, c. 735; 1985, c. 656, s. 21; 1987, c. 813, s. 12; 1993, c. 485, s. 17.)

§ 105-286. Time for general reappraisal of real property.

(a) Octennial Cycle. – Each county must reappraise all real property in accordance with the provisions of G.S. 105-283 and G.S. 105-317 as of January 1 of the year set out in the following

schedule and every eighth year thereafter, unless the county is required to advance the date under subdivision (2) of this section or chooses to advance the date under subdivision (3) of this section.

(1) Schedule of Initial Reappraisals.

Division One – 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, and Robeson.

Division Two – 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, Transylvania, and Washington.

Division Three – 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes.

Division Four – 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin.

Division Five – 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.

Division Six – 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.

Division Seven – 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.

Division Eight – 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.

(2) Mandatory Advancement. – A county whose population is 75,000 or greater according to the most recent annual population estimates certified to the Secretary by the State Budget Officer must conduct a reappraisal of real property when the county's sales assessment ratio determined under G.S. 105-289(h) is less than .85 or greater than 1.15, as indicated on the notice the county receives under G.S. 105-284. A reappraisal required under this subdivision must become effective no later than January 1 of the earlier of the following years:

a. The third year following the year the county received the notice.

b. The eighth year following the year of the county's last reappraisal.

(3) Optional Advancement. – A county may conduct a reappraisal of real property earlier than required by subdivision (1) or (2) of this subsection if the board of county commissioners adopts a resolution providing for advancement of the reappraisal. The resolution must designate the effective date of the advanced reappraisal and may designate a new reappraisal cycle that is more frequent than the octennial cycle set in subdivision (1) of this subsection. The board of county commissioners must promptly forward a copy of the resolution adopted under this subdivision to the Department of Revenue. A more frequent reappraisal cycle designated in a resolution adopted under this subdivision continues in effect after a mandatory reappraisal required under subdivision (2) of this subsection unless the board of county commissioners adopts another resolution that designates a different date for the county's next reappraisal.

(b), (c) Repealed by Session Laws 2008-146, s. 1.1, effective July 1, 2009. (1939, c. 310, s. 300; 1941, c. 282, ss. 1, 11/2; 1943, c. 634, s. 1; 1945, c. 5; 1947, c. 50; 1949, c. 109; 1951, c.

847; 1953, c. 395; 1955, c. 1273; 1957, c. 1453, s. 1; 1959, c. 704, s. 1; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 45, s. 1; 2008-146, s. 1.1.)

§ 105-287. Changing appraised value of real property in years in which general reappraisal is not made.

(a) In a year in which a general reappraisal of real property in the county is not made under G.S. 105-286, the property shall be listed at the value assigned when last appraised unless the value is changed in accordance with this section. The assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in the property's value resulting from one or more of the following reasons:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. The reason for an increase or decrease in appraised value made under this section need not be under the control of or at the request of the owner of the affected property. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the

unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property. (1939, c. 310, ss. 301, 500; 1953, c. 970, s. 5; 1955, c. 901; c. 1100, s. 2; 1959, c. 682; c. 704, s. 2; 1963, c. 414; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 10; c. 790, s. 2; 1987, c. 655; 1997-226, s. 4; 2001-139, s. 2; 2008-146, s. 1.2.)

Article 15.

Duties of Department and Property Tax Commission as to Assessments.

§ 105-288. Property Tax Commission.

(a) Creation and Membership. – The Property Tax Commission is created. It consists of five members, three of whom are appointed by the Governor and two of whom are appointed by the General Assembly. Of the two appointments by the General Assembly, one shall be made upon the recommendation of the Speaker of the House of Representatives and the other shall be made upon the recommendation of the President Pro Tempore of the Senate. The terms of the members are for four years and expire on June 30. The General Assembly shall make its appointments in accordance with G.S. 120-121 and shall fill a vacancy in accordance with G.S. 120-122. A vacancy occurs on the Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance.

The Commission shall have a chair and a vice-chair. The Governor shall designate one of the Commission members as the chair, to serve at the pleasure of the Governor. The members of the Commission shall elect a vice-chair from among its membership. The vice-chair serves until the member's regularly appointed term expires.

(b) Duties. – The Property Tax Commission constitutes the State Board of Equalization and Review for the valuation and taxation of property in the State. It shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105-333. The Commission may adopt rules needed to fulfill its duties.

(c) Oath. – Each member of the Property Tax Commission, as the appointed holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the Property Tax Commission to be influenced by personal or political friendships or obligations,".

(d) Expenses. – The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary as provided for by the Commission when hearing cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure. The members of the Property Tax Commission whose salaries or any portion of whose salaries are paid from State funds shall not receive travel and subsistence expenses, in accordance with G.S. 138-5(f), but shall receive a salary as provided for by the Commission under this subsection. The Secretary of Revenue shall supply all the clerical and other services

required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid as provided in G.S. 105-501.

(e) Meetings. – The Property Tax Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least three members. At least 15 days' notice shall be given to each member with respect to each special meeting. A majority of the Commission members constitutes a quorum for the transaction of business. (1939, c. 310, ss. 200, 201; 1941, c. 327, s. 6; 1947, c. 184; 1961, c. 547, s. 1; 1967, c. 1196, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1991, c. 110, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 20; c. 1016, s. 2; 1995, c. 41, s. 5; 2000-67, s. 7.11; 2005-276, s. 22.5(a); 2007-308, s. 1; 2017-206, s. 2(a).)

§ 105-289. Duties of Department of Revenue.

(a) It is the duty of the Department of Revenue:

(1) To discharge the duties prescribed by law and to enforce the provisions of this Subchapter.

(2) To exercise general and specific supervision over the valuation and taxation of property by taxing units throughout the State.

(3) To appraise the property of public service companies.

(4) To keep full and accurate records of the Commission's official proceedings.

(5) To prepare and distribute annually to each assessor the manual developed by the Use-Value Advisory Board under G.S. 105-277.7 that establishes the cash rental rates for agricultural lands and horticultural lands and the net income ranges for forestland.

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs from the income requirement for other horticultural land, when evergreens are harvested from the land.

(7) To conduct studies of the cash rents for agricultural and horticultural lands on a county or a regional basis, such as the Major Land Resource Area map designated and developed by the U.S. Department of Agriculture. The results of the studies must be furnished to the North Carolina Use-Value Advisory Board. The studies may be conducted on any reasonable basis and timetable that will be reflective of rents and values for each local area based on the productivity of the land.

(b), (c) Repealed by Session Laws 1973, c. 476, s. 193.

(d) In exercising general and specific supervision over the valuation and taxation of property, the Department shall provide the following:

(1) A continuing program of education and training for local tax officials in the conduct of their duties;

(2) A program for testing the qualifications of an assessor and other persons engaged in the appraisal of property for a county or municipality;

(3) A certification program for an assessor and other persons engaged in the appraisal of property for a county or municipality; and

(4) Assistance to the county and/or the county attorney in developing the specifications for the proposed contract sent to the Department for review pursuant to G.S. 105-299.

The Department shall promulgate regulations to carry out its duties under this subsection.

(e) The Department of Revenue may furnish the following information to a local tax official:

(1) Information contained in a report to it or to any other State department; and

(2) Information the Department has in its possession that may assist a local tax official in securing complete tax listings, appraising or assessing taxable property, collecting taxes, or presenting information in administrative or judicial proceedings involving the listing, appraisal, or assessment of property.

A local tax official may use information obtained from the Department under this subsection only for the purposes stated in subdivision (2). A local tax official may not divulge or make public this information except as required in administrative or judicial proceedings under this Subchapter. A local tax official who makes improper use of or discloses information obtained from the Department under this subsection is punishable as provided in G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate.

The Department may not furnish information to a local tax official pursuant to this subsection unless it has obtained a written certification from the official stating that the official is familiar with the provisions of this subsection and G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate, and that information obtained from the Department under this subsection will be used only for the purposes stated in subdivision (2).

(f) To advise local tax officials of their duties concerning the listing, appraisal, and assessment of property and the levy and collection of property taxes.

(g) To see that proper proceedings are brought to enforce the statutes pertaining to taxation and the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals who fail, refuse, or neglect to comply with the provisions of this Subchapter and other laws with respect to the taxation of property, and to call upon the Attorney General of this State or any prosecuting attorney of this State to assist in the execution of the powers conferred by the laws of this State with respect to the taxation of property.

(h) To make annual studies of the ratio of the appraised value of real property to its true value and to establish for each county the median ratio as determined by the studies for each calendar year. The studies for each calendar year shall be completed by April 15 of the following calendar year. The studies shall be conducted in accordance with generally accepted principles and procedures for sales assessment ratio studies.

(i) To maintain a register of appraisal firms, mapping firms and other persons or firms having expertise in one or more of the duties of the assessor; to review the qualifications and work of such persons or firms; and to advise county officials as to the professional and financial capabilities of such persons or firms to assist the assessor in carrying out his duties under this Subchapter. The register shall include a copy of the report

filed by the counties pursuant to G.S. 105-322(g)(4). It shall also include the average median sales assessment ratio and the coefficient of dispersion achieved in each county for the first two years following the county's effective date of revaluation. To be registered with the Department of Revenue, such persons or firms shall annually file a report with the Department setting forth the following information:

(1) A statement of the firm's ownership,
(2) A statement of the firm's financial condition,
(3) A list of the firm's principal officers with a statement of their qualifications and experience,
(4) A list of the firm's employees with a statement of their education, training and experience, and
(5) A full and complete resume of each employee which the firm proposes to place in a supervisory position in any mapping or revaluation project for a county in this State. (1939, c. 310, s. 202; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, s. 1; 1971, c. 806, s. 1; 1973, c. 47, s. 2; c. 476, s. 193; 1975, c. 275, s. 9; c. 508, s. 1; 1981, c. 387, ss. 1, 2; 1983, c. 813, s. 1; 1985, c. 601, s. 3; c. 628, s. 3; 1987, c. 45, s. 1; c. 46, s. 1; c. 440, s. 1; c. 830, s. 84(a); 1987 (Reg. Sess., 1988), c. 1052, s. 1; 1989, c. 79, ss. 2, 4; c. 736, s. 3; 1991, c. 110, s. 2; 1993, c. 485, s. 35; 2002-184, s. 5; 2005-313, s. 6.)

§ 105-289.1. Repealed by Session Laws 1987, c. 813, s. 12.

§ 105-290. Appeals to Property Tax Commission.

(a) Duty to Hear Appeals. – In its capacity as the State board of equalization and review, the Property Tax Commission shall hear and adjudicate appeals from boards of county commissioners and from county boards of equalization and review as provided in this section.

(b) Appeals from Appraisal and Listing Decisions. – The Property Tax Commission shall hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners. Any property owner of the county may except to an order of the county board of equalization and review or the board of county commissioners concerning the listing, appraisal, or assessment of property and appeal the order to the Property Tax Commission.

(1) In these cases, taxpayers and persons having ownership interests in the property subject to taxation may file separate appeals or joint appeals at the election of one or more of the taxpayers. It is the intent of this provision that all owners of a single item of personal property or tract or parcel of real property be allowed to join in one appeal and also that any taxpayer be allowed to include in one appeal all objections timely presented regardless of the fact that the listing or valuation of more than one item of personal property or tract or parcel of real property is the subject of the appeal.

(2) When an appeal is filed, the Property Tax Commission shall provide a hearing before representatives of the Commission or the full Commission as specified in this subdivision.

a. Hearing by Commission Representatives. – The Commission may authorize one or more members of the Commission or employees of the Department of Revenue to hear an appeal, to make examinations and investigations, to have made from stenographic notes a full and complete record of the evidence offered at the hearing, and to make recommended findings of fact and conclusions of law. Should the Commission elect to follow this procedure, it shall fix the time and place at which its representatives will hear the appeal and, at least 10 days before the hearing, give written notice of the hearing to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission's representatives shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The representatives conducting the hearing shall submit to the Commission and to the appellant and appellee their recommended findings of fact and conclusions of law. Upon the request of any party, the representatives conducting the hearing shall also submit to the Commission and to the appellant and appellee a full record of the proceeding. The cost of providing the full record of the proceeding shall be borne by the party requesting it, unless the Commission determines for good cause that the cost should be borne by the Commission. The Commission shall review the record, the recommended findings of fact and conclusions of law, and any written arguments that may be submitted to the Commission by the appellant or appellee within 15 days following the date on which the findings and conclusions were submitted to the parties and shall take one of the following actions:

1. Accept the recommended findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.
2. Make new findings of fact or conclusions of law based upon the materials submitted by the Commission's representatives and issue an appropriate order as provided in subdivision (b)(3), below.
3. Rehear the appeal under the procedure provided in subdivision (b)(2)b, below, with respect to any portion of the record or recommended findings of fact or conclusions of law.

b. Hearing by Full Commission. – Should the Commission elect not to employ the procedure provided in subdivision (b)(2)a, above, it shall fix a time and place at which the Commission shall hear the appeal and, at least 10 days before the hearing, give written notice of the hearing to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission shall

hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The Commission shall make findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.

(3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (b), the Property Tax Commission shall enter an order (incorporating the findings and conclusions) reducing, increasing, or confirming the valuation or valuations appealed or listing or removing from the tax lists the property whose listing has been appealed. A certified copy of the order shall be delivered to the appellant and to the clerk of the board of commissioners of the county from which the appeal was taken, and the abstracts and tax records of the county shall be corrected to reflect the Commission's order.

(4) Interest on Overpayments. – When an order of the Property Tax Commission reduces the valuation of property or removes the property from the tax lists and, based on the order, the taxpayer has paid more tax than is due on the property, the taxpayer is entitled to receive interest on the overpayment in accordance with this subdivision. An overpayment of tax bears interest at the rate set under G.S. 105-241.21 from the date the interest begins to accrue until a refund is paid. Interest accrues from the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed.

(c) Appeals from Adoption of Schedules, Standards, and Rules. – It shall be the duty of the Property Tax Commission to hear and to adjudicate appeals from orders of boards of county commissioners adopting schedules of values, standards, and rules under the provisions of G.S. 105-317 as prescribed in this subsection (c), and the adoption of such schedules, standards, and rules shall not be subject to appeal under any other provision of this Subchapter.

(1) A property owner of the county who, either separately or in conjunction with other property owners of the county, asserts that the schedules of values, standards, and rules adopted by order of the board of county commissioners do not meet the true value or present-use value appraisal standards established by G.S. 105-283 and G.S. 105-277.2(5), respectively, may appeal the order to the Property Tax Commission within 30 days of the date when the order adopting the schedules, standards, and rules was first published, as required by G.S. 105-317(c).

(2) Upon such an appeal the Property Tax Commission shall proceed to hear the appeal in accordance with the procedures provided in subdivisions (b)(1) and (b)(2), above, and in scheduling the hearing upon such an appeal, the Commission shall give it priority over appeals that may be pending before the Commission under the provisions of subsection (b), above. The decision of the Commission upon such an appeal shall be embodied in an order as provided in subdivision (c)(3), below.

(3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (c), the Property Tax Commission shall enter an order (incorporating the findings and conclusions):

a. Modifying or confirming the order adopting the schedules, standards, and rules challenged, or

b. Requiring the board of county commissioners to revise or modify its order of adoption in accordance with the instructions of the Commission and to present the order as thus revised or modified for approval by the Commission under rules and regulations prescribed by the Commission.

(d) Witnesses and Documents. – Upon its own motion or upon the request of any party to an appeal, the Property Tax Commission, or any member of the Commission, or any employee of the Department of Revenue so authorized by the Commission shall examine witnesses under oath administered by any member of the Commission or any employee of the Department so authorized by the Commission, and examine the documents of any person if there is ground for believing that information contained in such documents is pertinent to the decision of any appeal pending before the Commission, regardless of whether such person is a party to the proceeding before the Commission. Witnesses and documents examined under the authority of this subsection (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1), below. The travel expenses of any witness subpoenaed and the cost of serving any subpoena shall be borne by the party that requested the subpoena.

(1) The Property Tax Commission, a member of the Commission, or any employee of the Department of Revenue authorized by the Commission, is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Commission directed to the witness or witnesses or to the person or persons having custody of the documents sought. Subpoenas issued under this subdivision may be served by any officer authorized to serve subpoenas.

(2) Any person who shall willfully fail or refuse to appear, to produce subpoenaed documents in response to a subpoena, or to testify as provided in this subsection (d) shall be guilty of a Class 1 misdemeanor.

(3) Upon a motion, the Property Tax Commission, or a member of the Commission may quash a subpoena if, after a hearing, the Commission finds any of the following:

a. The subpoena requires the production of evidence that does not relate to a matter in issue.

b. The subpoena fails to describe with sufficient particularity the evidence required to be produced.

c. The subpoena is subject to being quashed for any other reason sufficient in law.

(d1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subdivision (d)(3) of this section shall be heard at least 10 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake

County or in the superior court of the county where the person subject to the subpoena resides.

(d2) Business Entity Representation. – If a property owner is a business entity, the business entity may represent itself using a nonattorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of nonattorney representation shall be made in writing, under penalty of perjury, to the Commission on a form provided by the Commission.

(e) Time Limits for Appeals. – A notice of appeal from an order of a board of county commissioners, other than an order adopting a uniform schedule of values, or from a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the date the board mailed a notice of its decision to the property owner. A notice of appeal from an order adopting a schedule of values shall be filed within the time set in subsection (c).

(f) Notice of Appeal. – A notice of appeal filed with the Property Tax Commission shall be in writing and shall state the grounds for the appeal. A property owner who files a notice of appeal shall send a copy of the notice to the appropriate county assessor.

(g) What Constitutes Filing. – A notice of appeal submitted to the Property Tax Commission by a means other than United States mail is considered to be filed on the date it is received in the office of the Commission. A notice of appeal submitted to the Property Tax Commission by United States mail is considered to be filed on the date shown on the postmark stamped by the United States Postal Service. If an appeal submitted by United States mail is not postmarked or the postmark does not show the date of mailing, the appeal is considered to be filed on the date it is received in the office of the Commission. A property owner who files an appeal with the Commission has the burden of proving that the appeal is timely. (1939, c. 310, ss. 202, 1107, 1109; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 295, ss. 3, 9; c. 680, ss. 4, 5; 1989 (Reg. Sess., 1990), c. 1005, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 1016, s. 1; 1993, c. 539, s. 713; 1994, Ex. Sess., c. 24, s. 14(c); 1997-205, s. 1; 2007-251, ss. 3, 4; 2007-491, s. 44(1)a; 2014-120, s. 7(b).)

§ 105-291. Powers of Department and Commission.

(a) General Powers. – The Department of Revenue is authorized to exercise all powers reasonably necessary to perform the duties imposed upon it by this Subchapter and other laws of this State.

(b) Rule-Making Power. – The Department may adopt such rules and regulations, not inconsistent with law, as the Department may deem necessary to perform the duties or responsibilities of this Chapter.

(c) General Investigatory Authority. – In exercising general and specific supervision over the valuation and taxation of property, the Department or any authorized deputy shall

have power to examine witnesses under oath administered by any member or authorized deputy and to examine the documents of any State department, county, city, town, or taxpayer if there is ground for believing that the witnesses have or that the documents contain information pertinent to the subject of the Department's inquiry. Witnesses and documents examined under the authority of this subsection (c) may be obtained through service of subpoenas as provided in subdivision (c)(1), below.

(1) To obtain the testimony of witnesses or to obtain access to the documents enumerated in this subsection (c), the Department or any authorized deputy is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the Secretary of Revenue directed to the witness or to the person having custody of the documents sought, and to be served by any officer authorized to serve subpoenas.

(2) Any person who shall willfully fail or refuse to appear; to produce subpoenaed documents before the Department or authorized deputy in response to a subpoena; or to testify as provided in this subsection (c) shall be guilty of a Class 1 misdemeanor.

(d) Certification of Actions. – The Property Tax Commission shall have power to certify copies of its records, orders, and proceedings by attesting the copies with its official seal, and copies of records, orders, or proceedings so certified shall be received in evidence in all courts of this State with like effect as certified copies of other public records.

(e) Power to Require Reports. – In its discretion, the Department may require tax supervisors, clerks of boards of county commissioners, and county accountants to file with it, when called for, complete reports of the appraised and assessed value of all real and personal property in the counties, itemized as the Department may prescribe.

(f) Power to Prescribe Record Forms. – The Department may prescribe the forms, books, and records to be used in the listing, appraisal, and assessment of property and in the levying and collection of property taxes, and how the same shall be kept.

(g) Power to Recommend Appraisal Standards. – The Department may develop and recommend standards and rules to be used by tax supervisors and other responsible officials in the appraisal of specific kinds and categories of property for taxation. (1939, c. 310, s. 203; 1945, c. 955; 1951, c. 798; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1993, c. 539, s. 714; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 105-292 through 105-293: Repealed by Session Laws 1973, c. 476, s. 193.

Article 16.

County Listing, Appraisal, and Assessing Officials.

§ 105-294. County assessor.

(a) Appointment. – Persons occupying the position of county assessor on July 1, 1983, shall continue in office until the first Monday in July, 1983. At its first regular meeting in July, 1983, and every two years or four years thereafter, as appropriate, the board of county commissioners of each county shall appoint a county assessor to serve a term of not less than two

nor more than four years; provided, however, that no person shall be eligible for initial appointment to a term of more than two years unless such person is deemed to be qualified as provided in subsection (b) of this section or has been certified by the Department of Revenue as provided in subsection (c) of this section. The board of commissioners may remove the assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the board. Whenever a vacancy occurs in this office, the board of county commissioners shall appoint a qualified person to serve as county assessor for the period of the unexpired term.

(b) Persons who held the position of assessor on July 1, 1971, and continue to hold the position, and persons who have been certified for appointment as assessor by the Department of Revenue between July 1, 1971, and July 1, 1983, are deemed to be qualified to serve as county assessor. Any other person selected to serve as county assessor must meet the following requirements:

(1) Be at least 21 years of age as of the date of appointment;

(2) Hold a high school diploma or certificate of equivalency, or in the alternative, have five years employment experience in a vocation which is reasonably related to the duties of a county assessor;

(3) Within two years of the date of appointment, achieve a passing score in courses of instruction approved by the Department of Revenue covering the following topics:

a. The laws of North Carolina governing the listing, appraisal, and assessment of property for taxation;

b. The theory and practice of estimating the fair market value of real property for ad valorem tax purposes;

c. The theory and practice of estimating the fair market value of personal property for ad valorem tax purposes; and

d. Property assessment administration.

(4) Upon completion of the required four courses, achieve a passing grade in a comprehensive examination in property tax administration conducted by the Department of Revenue.

(c) Certification. – Persons meeting all of the requirements of this section shall be certified by the Department of Revenue. From the date of appointment until the date of certification, persons appointed to serve as county assessor are deemed to be serving in an acting capacity. Any person who fails to qualify within two years after the date of initial appointment shall not be eligible for reappointment until all of the requirements have been met.

(d) In order to retain the position of county assessor, every person serving as county assessor, including those persons deemed to be qualified under the provisions of this act, shall, in each period of 24 months, attend at least 30 hours of instruction in the appraisal or assessment of property as provided in regulations of the Department of Revenue.

(e) The compensation and expenses of the county assessor shall be determined by the board of county commissioners.

(f) Alternative to separate office of county assessor. – Pursuant to Act [Article] VI, Section 9 of the North Carolina Constitution, the office of county assessor is hereby declared to be an office that may be held concurrently with any other appointive or elective office except that of member of the board of county commissioners. (1939, c. 310, ss. 400, 401; 1953, c. 970, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1983, c. 813, s. 2; 1987, c. 45, ss. 1, 2; 1997-23, s. 5.)

§ 105-295. Oath of office for assessor.

The assessor, as the holder of an appointed office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as assessor to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners. (1939, c. 310, s. 402; 1971, c. 806, s. 1; 1987, c. 45, s. 1; 1991, c. 110, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 21.)

§ 105-296. Powers and duties of assessor.

(a) The county assessor shall have general charge of the listing, appraisal, and assessment of all property in the county in accordance with the provisions of law. He shall perform the duties imposed upon him by law, and he shall have and exercise all powers reasonably necessary in the performance of his duties not inconsistent with the Constitution or the laws of this State.

(b) Within budgeted appropriations, he shall employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law. The assessor may allocate responsibility among such employees by territory, by subject matter, or on any other reasonable basis. Each person employed by the assessor as a real property appraiser or personal property appraiser shall during the first year of employment and at least every other year thereafter attend a course of instruction in his area of work. At the end of the first year of their employment, such persons shall also achieve a passing score on a comprehensive examination in property tax administration conducted by the Department of Revenue.

(c) At least 10 days before the date as of which property is to be listed, the assessor shall advertise in a newspaper having general circulation in the county and post in at least five public places in each township in the county a notice containing all of the items listed in this subsection. If the listing period is extended in any county by the board of county commissioners, the assessor shall advertise in the newspaper in which the original notice was published and post in the same places a notice of the extension and of the times during which and the place or places at which lists will be accepted during the extended period. The items that must be included in the notice are:

(1) The date as of which property is to be listed.
(2) The date on which listing will begin.
(3) The date on which listing will end.
(4) The times between the date mentioned in subdivision (c)(2), above, and the date mentioned in subdivision (c)(3), above, during which lists will be accepted.
(5) The place or places at which lists will be accepted at the times established under subdivision (c)(4), above.
(6) A statement that all persons who, on the date as of which property is to be listed, own property subject to taxation must list such property within the period set forth in the notice and that any person who fails to do so will be subject to the penalties prescribed by law.

(7) If the county has provided for electronic listing of personal property under G.S. 105-310.1, a statement that the county allows electronic listing of personal property and the timetable and procedures for electronic listing.

(d) through (f) Repealed by Session Laws 1987, c. 43, s. 2.

(g) He shall have power to subpoena any person for examination under oath and to subpoena documents whenever he has reasonable grounds for the belief that such person has knowledge or that such documents contain information that is pertinent to the discovery or valuation of any property subject to taxation in the county or that is necessary for compliance with the requirements as to what the tax list shall contain. The subpoena shall be signed by the chairman of the board of equalization and review if that board is in session; otherwise, it shall be signed by the chairman of the board of county commissioners. It shall be served by an officer qualified to serve subpoenas. Any person who shall wilfully fail or refuse to appear, produce subpoenaed documents, or testify concerning the subject of the inquiry shall be guilty of a Class 1 misdemeanor.

(h) Only after the abstract has been carefully reviewed can the assessor require any person operating a business enterprise in the county to submit a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. Inventories, statements of assets and liabilities, or other information secured by the assessor under the terms of this subsection, but not expressly required by this Subchapter to be shown on the abstract itself, shall not be open to public inspection but shall be made available, upon request, to representatives of the Department of Revenue or of the Division of Employment Security (DES) of the Department of Commerce. Any assessor or other official or employee disclosing information so obtained, except as may be necessary in listing or appraising property in the performance of official duties, or in the administrative or judicial proceedings relating to listing, appraising, or other official duties, shall be guilty of a Class 3 misdemeanor and punishable only by a fine not exceeding fifty dollars ($50.00).

(i) Prior to the first meeting of the board of equalization and review, the assessor may, for good cause, change the appraisal of any property subject to assessment for the current year. Written notice of a change in assessment shall be given to the taxpayer at his last known address prior to the first meeting of the board of equalization and review.

(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the North Carolina Forest Service of the Department of Agriculture and Consumer Services, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the

assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination.

(k) He shall furnish information to the Department of Revenue as required by the Department to conduct studies in accordance with G.S. 105-289(h).

(l) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion.

(m) The assessor shall annually review the transportation corridor official maps and amendments to them filed with the register of deeds pursuant to Article 2E of Chapter 136 of the General Statutes. The assessor must indicate on all tax maps maintained by the county or city that portion of the properties embraced within a transportation corridor and must note any variance granted for the property for such period as the designation remains in effect. The assessor must tax the property within a transportation corridor as required under G.S. 105-277.9 and G.S. 105-277.9A. (1939, c. 310, ss. 403, 404; 1953, c. 970, s. 3; 1955, c. 1012, s. 1; 1957, c. 202; 1959, c. 740, s. 3; 1963, c. 302; 1971, c. 806, s. 1; 1973, c. 560; 1983, c. 813, s. 3; 1985, c. 518, s. 2; 1987, c. 43, s. 2; c. 45, ss. 1, 2; c. 830, s. 84(b); 1987 (Reg. Sess., 1988), c. 1044, s. 13; 1991, c. 34, s. 2; c. 77, s. 1; 1993, c. 539, ss. 715,

716; 1994, Ex. Sess., c. 24, s. 14(c); 2001-139, ss. 3-5; 2002-184, s. 6; 2005-313, s. 7; 2005-386, s. 1.4; 2011-145, s. 13.25(pp); 2011-238, s. 2; 2011-401, s. 5.1; 2013-155, s. 8; 2014-3, s. 14.19.)

§ 105-297. Assistant assessor.

The board of county commissioners may, upon the recommendation of the assessor, appoint one or more assistant assessors. The board may delegate to assistant assessors appointed under this section responsibility for the appraisal of real property, the listing and appraisal of business property, or such other duties as the board deems advisable. Pursuant to Article VI, Sec. 9, of the North Carolina Constitution, the office of assistant assessor is hereby declared to be an office that may be held concurrently with any other appointive office. (1939, c. 310, s. 409; 1955, c. 866; 1963, c. 625; 1967, cc. 59, 293; 1971, c. 802, s. 11; c. 806, s. 1; 1987, c. 45, s. 1.)

§ 105-298: Repealed by Session Laws 1987, c. 43, s. 3.

§ 105-299. Employment of experts.

The board of county commissioners may employ appraisal firms, mapping firms or other persons or firms having expertise in one or more of the duties of the assessor to assist the assessor in the performance of these duties. The county may also assign to county agencies, or contract with State or federal agencies for, any duties involved with the approval or auditing of use-value accounts. The county may make available to these persons any information it has that will facilitate the performance of a contract entered into pursuant to this section. Persons receiving this information are subject to the provisions of G.S. 105-289(e) and G.S. 105-259 regarding the use and disclosure of information provided to them by the county. Any person employed by an appraisal firm whose duties include the appraisal of property for the county must be required to demonstrate that he or she is qualified to carry out these duties by achieving a passing grade on a comprehensive examination in the appraisal of property administered by the Department of Revenue. In the employment of these firms, primary consideration must be given to the firms registered with the Department of Revenue pursuant to G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a copy of the proposed contract may be sent by the board to the Department of Revenue for review before the invitation or acceptance of any bids. Contracts for the employment of these firms or persons are contracts for personal services and are not subject to the provisions of Article 8, Chapter 143, of the General Statutes. If the board of county commissioners employs any person or firm to assist the assessor in the performance of the assessor's duties, the person or firm may not be compensated, in whole or in part, on a contingent fee basis or any other similar method that may impair the assessor's independence or the perception of the assessor's independence by the public. (1939, c. 310, s. 408; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1975, c. 508, s. 2; 1983, c. 813, s. 4; 1985, c. 601, s. 2; 1989, c. 79; 2002-184, s. 7; 2003-416, s. 9; 2012-152, s. 2; 2012-194, s. 61.5(b).)

§ 105-300. Tax commission.

In all counties having a tax commission or comparable agency, the commission or agency shall, except for levying taxes, perform all the duties required by this Subchapter to be performed by the board of equalization and review and the board of county commissioners. All expenses incurred by the tax commission or agency or its appointees in accordance with this Subchapter shall be paid by the county. Pursuant to Article VI, Sec. 9, of the North Carolina Constitution, the office of member of a tax commission or comparable agency is hereby declared to be an office that may not be held concurrently with any other elective or appointive office. (1939, c. 310, s. 410; 1971, c. 806, s. 1.)

Article 17.

Administration of Listing.

§ 105-301. Place for listing real property.

All taxable real property that is not required by this Subchapter to be appraised originally by the Department of Revenue shall be listed in the county in which it is situated. If all or part of the real property is situated within the boundaries of a municipal corporation, this fact shall be specified on the abstract as required by G.S. 105-309. Nothing in this section shall be construed to conflict with the provisions of G.S. 105-326 through 105-328. (1939, c. 310, s. 700; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-302. In whose name real property is to be listed.

(a) Taxable real property shall be listed in the name of the owner, and it shall be the owner's duty to list it unless the board of county commissioners shall have adopted a permanent listing system as provided in G.S. 105-303(b). For purposes of this section, the board of county commissioners may require that real property be listed in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

(b) If real property is listed in the name of one other than the person in whose name it should be listed, and the name of the proper person is later ascertained, the abstract and tax records shall be corrected to list the property in the name of the person in whose name it should have been listed. The corrected listing shall have the same force and effect as if the real property had been listed in the name of the proper person in the first instance.

(c) For purposes of this Subchapter:

(1) The owner of the equity of redemption in real property subject to a mortgage or deed of trust shall be considered the owner of the property, and such real property shall be listed in the name of the owner of the equity of redemption.

(2) Real property owned by a corporation shall be listed in the name of the corporation.

(3) Real property owned by an unincorporated association shall be listed in the name of the association.

(4) Real property owned by a partnership shall be listed in the name of the partnership.

(5) Real property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.

(6) Real property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the heirs or devisees if known, but such property may be listed as property of "the heirs" or "the devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of real property to list it in his fiduciary capacity, as required by subdivision (c)(7), below, until he is divested of control of the property. However, the right of an administrator or executor of a deceased person to petition for the sale of real property to make assets shall not be considered control of the real property for the purposes of this subdivision.

(7) Real property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.

(8) A life tenant or tenant for the life of another shall be considered the owner of real property, and it shall be his duty to list the property for taxation, indicating on the abstract that he is a life tenant or tenant for the life of another named individual.

(9) Upon request to and with the approval of the assessor, undivided interests in real property owned by tenants in common who are not copartners may be listed by the respective owners in accordance with their respective undivided interests. Otherwise, real property held by tenants in common shall be listed in the names of all the owners.

(10) Real property owned by husband and wife as tenants by the entirety shall be listed on a single abstract in the names of both tenants, and the nature of their ownership shall be indicated thereon.

(11) When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, waterpower, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.

(12) If the person in whose name real property should be listed is unknown, or if title to real property is in dispute, the property shall be listed in the name of the occupant or, if there be no occupant, in the name of "unknown owner." Such a listing shall not affect the validity of the lien for taxes created by G.S. 105-355. When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.

(13) Real property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity. (1939, c. 310, s. 701; 1971, c. 806, s. 1; 1983, c. 785, s. 1; 1987, c. 45, s. 1.)

§ 105-302.1. Reports on properties listed in name of unknown owner.

In order to promote the discovery of "State lands" as defined by G.S. 146-64(6), it shall be the duty of all assessors upon request to furnish the State of North Carolina a report on all properties listed in the name of "unknown owner" pursuant to G.S. 105-302(c)(12) in their respective tax

jurisdictions. Such report shall be forwarded to the Secretary of the North Carolina Department of Administration. The report shall contain all information available to the assessor concerning the location and identification of the properties in question. (1979, c. 45, s. 1; 1987, c. 45, s.1)

§ 105-303. Obtaining information on real property transfers; permanent listing.

(a) To facilitate the accurate listing of real property for taxation, the board of county commissioners may require the register of deeds to comply with the provisions of subdivision (a)(1), below, or it may require him to comply with the provisions of subdivision (a)(2), below:

(1) When any conveyance of real property (other than a deed of trust or mortgage) is recorded, the board of county commissioners may require the register of deeds to certify to the assessor:

a. The name of the person conveying the property.

b. The name and address of the person to whom the property is being conveyed.

c. A description of the property sufficient to locate and identify it.

d. A statement as to whether the parcel is conveyed in whole or in part.

(2) When any conveyance of real property (other than a deed of trust or mortgage) is submitted for recordation, the board of county commissioners may require the register of deeds to refuse to record it unless it has been presented to the assessor and the assessor has noted thereon that he has obtained the information he desires from the conveyance and from the person recording it.

(b) The board of commissioners of each county must install a permanent listing system. Each county must obtain the approval of the Department of Revenue for its permanent listing system. Under such a system the provisions of subdivisions (b)(1) through (b)(4) of this subsection apply.

(1) The assessor is responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

(2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 are relieved of that duty, but annually, during the listing period established by G.S. 105-307, these persons must furnish the assessor with the information concerning improvements on and separate rights in real property required by G.S. 105-309(c)(3) through (c)(5).

(3) The penalties imposed by G.S. 105-308 and 105-312 do not apply to failure to list real property for taxation, but they apply to failure to comply with the provisions of subdivision (b)(2) of this subsection with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by G.S. 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.

(4) The Department of Revenue may authorize the board of county commissioners to make additional modifications of the listing requirements of this Subchapter, as long as the modifications do not conflict with subdivisions (b)(1) through (b)(3) of this subsection. (1939, c. 310, s. 701; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 789; 1987, c. 43, s. 4; c. 45, s. 1; 1999-297, s. 3.)

§ 105-304. Place for listing tangible personal property.

(a) Listing Instructions. – This section applies to all taxable tangible personal property that has a tax situs in this State and that is not required by this Subchapter to be appraised originally by the Department of Revenue. The place in this State at which this property is taxable is determined according to the rules provided in this section. The person whose duty it is to list property must list it in the county in which the place of taxation is located, indicating on the abstract the information required by G.S. 105-309(d). If the place of taxation lies within a city or town that requires separate listing under G.S. 105-326(a), the person whose duty it is to list must also list the property for taxation in the city or town.

(a1) Repealed by Session Laws 2011-238, s. 1, effective June 23, 2011.

(b) Definitions. – The following definitions apply in this section:

(1) Situated. – More or less permanently located.

(2) Business premises. – The term includes, for purposes of illustration, the following: Store, mill, dockyard, piling ground, shop, office, mine, farm, factory, warehouse, rental real estate, place for the sale of property (including the premises of a consignee), and place for storage (including a public warehouse).

(3) Repealed by Session Laws 2011-238, s. 1, effective June 23, 2011.

(c) General Rule. – Except as otherwise provided in subsections (d) through (h) of this section, tangible personal property is taxable at the residence of the owner. For purposes of this section:

(1) The residence of an individual person who has two or more places in this State at which the individual occasionally dwells is the place at which the individual dwelt for the longest period of time during the calendar year immediately preceding the date as of which property is to be listed for taxation.

(2) The residence of a domestic or foreign taxpayer other than an individual person is the place at which its principal North Carolina place of business is located.

(d) Property of Taxpayers With No Fixed Residence in This State. –

(1) Tangible personal property owned by an individual nonresident of this State is taxable at the place in this State at which the property is situated.

(2) Tangible personal property owned by a domestic or foreign taxpayer (other than an individual person) that has no principal office in this State is taxable at the place in this State at which the property is situated.

(e) Farm Products. – Farm products produced in this State, if owned by their producer, are taxable at the place in this State at which they were produced.

(f) Property Situated or Commonly Used at Premises Other Than Owner's Residence. – Subject to the provisions of subsection (e) of this section:

(1) Tangible personal property situated at or commonly used in connection with a temporary or seasonal dwelling owned or leased by the owner of the personal property is taxable at the place at which the temporary or seasonal dwelling is situated.

(2) Tangible personal property situated at or commonly used in connection with a business premises hired, occupied, or used by the owner of the personal property (or by the owner's agent or employee) is taxable at the place at which the business premises is situated. Tangible personal property that may be used

by the public generally or that is used to sell or vend merchandise to the public falls within the provisions of this subdivision.

(3) Tangible personal property situated at or commonly used in connection with a premise owned, hired, occupied, or used by a person who is in possession of the personal property under a business agreement with the property's owner is taxable at the place at which the possessor's premise is situated. For purposes of this subdivision, the term "business agreement" means a commercial lease, a bailment for hire, a consignment, or a similar business arrangement.

(4) In applying the provisions of subdivisions (1), (2), and (3) of this subsection, the temporary absence of tangible personal property from the place at which it is taxable under one of those subdivisions on the day as of which property is to be listed does not affect the application of the rules established in those subdivisions. The presence of tangible personal property at a location specified in subdivision (1), (2), or (3) of this subsection on the day as of which property is to be listed is prima facie evidence that it is situated at or commonly used in connection with that location.

(g) Decedents. – The tangible personal property of a decedent whose estate is in the process of administration or has not been distributed is taxable at the place at which it would be taxable if the decedent were still alive and still residing at the place at which the decedent resided at the time of death.

(h) Beneficial Ownership. – Tangible personal property within the jurisdiction of the State held by a resident or nonresident trustee, guardian, or other fiduciary having legal title to the property is taxable in accordance with the following rules:

(1) If any beneficiary is a resident of the State, an amount representing that beneficiary's portion of the property is taxable at the place at which it would be taxable if the beneficiary owned that portion.

(2) If any beneficiary is a nonresident of the State, an amount representing that beneficiary's portion of the property is taxable at the place at which it would be taxable if the fiduciary were the beneficial owner of the property. (1939, c. 310, s. 800; 1947, c. 836; 1951, c. 1102, s. 1; 1955, c. 1012, ss. 2, 3; 1969, c. 940; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 1180; 2001-279, s. 1; 2006-30, s. 1; 2011-238, s. 1.)

§ 105-305. Place for listing intangible personal property.

(a) Listing Instructions. – This section applies to all taxable intangible personal property that has a tax situs in this State and is not required by this Subchapter to be appraised originally by the Department of Revenue. The place in this State at which this property is taxable shall be determined as provided in this section. The person whose duty it is to list property shall list it in the county in which the place of taxation is located, indicating on the abstract the information required by G.S. 105-309(d). If the place of taxation lies within a city or town that requires separate listing under G.S. 105-326(a), the person whose duty it is to list shall also list the property for taxation in the city or town.

(b) Repealed by Session Laws 1997-456, s. 43(a).

(c) Intangible personal property representing an interest or interests in real property that is situated in this State shall be taxable in the place in which the represented real property is located.

(d), (e) Repealed by Session Laws 1997-456, s. 43(a). (1939, c. 310, s. 801; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1995, c. 41, s. 8; 1997-456, s. 43(a).)

§ 105-306. In whose name personal property is to be listed.

(a) Taxable personal property shall be listed in the name of the owner on the day as of which property is to be listed for taxation, and it shall be the duty of the owner to list the property.

(b) If personal property is listed in the name of a person other than the one in whose name it should be listed, and the name of the proper person is later ascertained, the abstract and tax records shall be corrected to list the property in the name in which it should have been listed. The corrected listing shall have the same force and effect as if the personal property had been listed in the name of the proper person in the first instance.

(c) For purposes of this Subchapter:

(1) The owner of the equity of redemption in personal property subject to a chattel mortgage shall be considered the owner of the property.

(2) The vendee of personal property under a conditional bill of sale, or under any other sale contract through which title to the property is retained by the vender as security for the payment of the purchase price, shall be considered the owner of the property if he has possession of or the right to use the property.

(3) Personal property owned by a corporation, partnership, or unincorporated association shall be listed in the name of the corporation, partnership, or unincorporated association.

(4) Personal property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.

(5) Personal property of which a decedent died possessed, if not under the control of a personal representative, shall be listed in the names of the next of kin or devisees if known, but such property may be listed as property of "the next of kin" or "the devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of a personal representative having control of personal property to list it in the personal representative's fiduciary capacity, as required by subdivision (c)(6), below, until the personal representative is divested of control of the property.

(6) Personal property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.

(7) If personal property is owned by two or more persons who are joint owners, each owner shall list the value of his interest. However, if the joint owners are husband and wife, the property owned jointly shall be listed on a single abstract in the names of both the husband and the wife.

(8) If the person in whose name personal property should be listed is unknown, or if the ownership of the property is in dispute, the property shall be listed in the name of the person in possession of the property, or if there appears to be no person in possession, in the name of "unknown owner." When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.

(9) Personal property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity. (1939, c. 310, s. 802; 1971, c. 806, s. 1; 1983, c. 785, s. 2; 1987, c. 45, s. 1; 2011-284, s. 71.)

§ 105-307. Length of listing period; extension; preliminary work.

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

(1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.

(2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.

(3) If the county has provided for electronic listing of personal property under G.S. 105-310.1, the period for electronic listing of personal property may be extended up to June 1. A resolution that provides a general extension of time for the electronic listing of personal property shall continue in effect until revised or rescinded unless otherwise stated in the resolution.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. Notwithstanding the individual extension time limitation in this subsection, if the county has provided for electronic listing of personal property under G.S. 105-310.1, extensions granted for electronic listing of personal property shall not extend beyond June 1.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285. (1939, c. 310, s. 905; 1971, c. 806, s. 1; 1973, cc. 141, 706; 1975, c. 49; 1977, c. 360; 1987, c. 43, s. 5; c. 45, s. 1; 2001-279, s. 2; 2006-30, s. 2; 2011-238, s. 3.)

§ 105-308. Duty to list; penalty for failure.

Every person in whose name any property is to be listed under the terms of this Subchapter shall list the property with the assessor within the time allowed by law on an abstract setting forth the information required by this Subchapter.

In addition to all other penalties prescribed by law, any person whose duty it is to list any property who willfully fails or refuses to list the same within the time prescribed by law shall be guilty of a Class 2 misdemeanor. The failure to list shall be prima facie evidence that the failure was willful.

Any person who willfully attempts, or who willfully aids or abets any person to attempt, in any manner to evade or defeat the taxes imposed under this Subchapter, whether by removal or concealment of property or otherwise, shall be guilty of a Class 2 misdemeanor. (1939, c. 310, s. 901; 1957, c. 848; 1971, c. 806, s. 1; 1977, c. 92; 1987, c. 43, s. 4, c. 45, s. 1; 1993, c. 539, s. 717; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-309. What the abstract shall contain.

(a) Each person whose duty it is to list property for taxation shall file each year with the assessor a tax list or abstract showing, as of the date prescribed by G.S. 105-285(b), the information required by this section. Subject to the provisions of subdivisions (a)(1) and (a)(2), below, each person whose duty it is to list property for taxation shall file a separate abstract.

(1) Tenants by the entirety shall file a single abstract listing the real property so held, together with all personal property they own jointly.

(2) Tenants in common shall file a single abstract listing the real property so held, together with all personal property that they own jointly, unless, as provided in G.S. 105-302(c)(9), the assessor allows them to list their undivided interests in the real property on separate abstracts.

(b) Each abstract shall show the taxpayer's name; residence address; and, if required by the assessor, business address.

(1) An individual trading under a firm name shall show his name and address and also the name and address of his business firm.

(2) An unincorporated association shall show both the name and address of the association and the names and addresses of its principal officers.

(3) A partnership shall show both the name and address of the partnership and the names and addresses of its full partners.

(c) Each tract, parcel, or lot of real property owned or controlled in the county shall be listed in accordance with the following instructions:

(1) Real property not divided into lots shall be described by giving:

a. The township in which located.

b. The total number of acres in the tract, or, if smaller than one acre, the dimensions of the parcel.

c. The tract name (if any), the names of at least two adjoining landowners, a reference to the tract's designation on any map maintained in the office of the assessor or on file in the office of the register of deeds, or some other description sufficient to identify and locate the property by parol testimony.

d. If applicable, the number of acres of:

1. Cleared land;

2. Woods and timberland;

3. Land containing mineral or quarry deposits;

4. Land susceptible of development for waterpower;

5. Wasteland.

e. The portion of the tract or parcel located within the boundaries of any municipality.

(2) Real property divided into lots shall be described by giving:

a. The township in which located.

b. The dimensions of the lot.

c. The location of the lot, including its street number (if any).

d. The lot's designation on any map maintained in the office of the assessor or on file in the office of the register of deeds, or some description sufficient to identify and locate the property by parol testimony.

e. The portion of the lot located within the boundaries of any municipality.

(3) In conjunction with the listing of any real property under subdivisions (c)(1) and (c)(2), above, there shall be given a short description of any buildings and other improvements thereon that belong to the owner of the land.

(4) Buildings and other improvements having a value in excess of one hundred dollars ($100.00) that have been acquired, begun, erected, damaged, or destroyed since the time of the last appraisal of property shall be described.

(5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, waterpower, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.

a. Buildings, other improvements, and separate rights owned by a taxpayer with respect to the lands of another shall be listed separately and identified so as to indicate the name of the owner thereof and the tract, parcel, or lot on which the buildings or other improvements are situated or to which the separate rights appertain.

b. In accordance with the provisions of G.S. 105-302(c)(11), buildings or other improvements or separate rights owned by a taxpayer with respect to the lands of another may be listed either in the name of the owner of the buildings, other improvements, or rights, or in the name of the owner of the land.

(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. The assessor may require additional information as follows:

(1) If the assessor considers it necessary to obtain a complete listing of personal property, the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information the taxpayer has with respect to the true value of the personal property the taxpayer is required to list.

(e) At the end of the abstract each person whose duty it is to list property for taxation shall sign the affirmation required by G.S. 105-310.

(f) The assessor must print a homestead tax relief notice on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the

address and telephone number of the assessor below the notice required by this section. The notice must be in the form required by the Department of Revenue designed to notify the taxpayer of his or her rights and responsibilities under the homestead property tax exclusion provided in G.S. 105-277.1 and the property tax homestead circuit breaker provided in G.S. 105-277.1B.

(g) Any person who fails to give the notice required by G.S. 105-309(f) shall not only be subject to loss of the exemption, but also to the penalties provided by G.S. 105-312, and also if willful to the penalty provided in G.S. 105-310. For the purpose of determining whether a penalty is levied, whenever a taxpayer has received an exemption under G.S. 105-277.1 for one taxable year but the property of taxpayer is not eligible for the exemption the next year, notice given of that fact to the assessor on or before April 15 shall be considered as timely filed. (1939, c. 310, s. 900; 1941, c. 221, s. 1; 1953, c. 970, s. 6; 1955, c. 34; 1971, c. 806, s. 1; 1973, c. 448, s. 2; c. 476, s. 193; 1975, c. 881, s. 3; 1977, c. 666, s. 2; 1979, c. 846, s. 2; 1981, c. 54, ss. 4-6; c. 1052, s. 1; 1985, c. 656, ss. 47, 51; 1985 (Reg. Sess., 1986), c. 947, s. 9; c. 982, s. 23; 1987, c. 43, s. 6; c. 45, s. 1; 1993, c. 360, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 15.1(b); 1998-98, s. 111; 2001-308, s. 2; 2007-484, s. 43.7T(b); 2007-497, s. 2.5; 2014-3, s. 14.20(a).)

§ 105-310. Affirmation; penalty for false affirmation.

There shall be annexed to the abstract on which the taxpayer's property is listed the following affirmation, which shall be signed by an individual qualified under the provisions of G.S. 105-311:

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this listing, including any accompanying statements, inventories, schedules, and other information, is true and complete. (If this affirmation is signed by an individual other than the taxpayer, he affirms that he is familiar with the extent and true value of all the taxpayer's property subject to taxation in this county and that his affirmation is based on all the information of which he has any knowledge.)

Any individual who willfully makes and subscribes an abstract listing required by this Subchapter which he does not believe to be true and correct as to every material matter shall be guilty of a Class 2 misdemeanor. (1939, c. 310, s. 902; 1971, c. 806, s. 1; 1993, c. 539, s. 718; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-310.1. Electronic listing of personal property.

(a) Personal property may be listed by electronic listing as provided in this section.

(b) The Department of Revenue may establish, after consultation with the counties, the standards and requirements for electronic listing of personal property, including the minimum requirements that must exist before electronic listing will be allowed in a county.

(c) The board of county commissioners may, by resolution, provide for electronic listing of personal property in accordance with the standards and requirements prescribed by the Department of Revenue. The board of county commissioners may, by resolution, delegate its authority to provide for electronic listing of personal property to the county assessor.

(d) Definitions. – The following definitions apply in this section:

(1) Electronic. – Defined in G.S. 66-312.

(2) Electronic listing. – The filing by electronic means of the abstract required by G.S. 105-309 and the affirmation required by G.S. 105-310. (2011-238, s. 4.)

§ 105-311. Listing and signing affirmation; use of agents, mail, and electronic listing.

(a) Except as otherwise provided in this section, the person whose duty it is to list property for taxation shall file the completed abstract with the assessor for purposes of listing and shall sign the affirmation required by G.S. 105-310 to be annexed to the completed abstract on which the property is listed. The abstract must be filed with the assessor on a form approved by the Department of Revenue.

(1) In the case of an individual taxpayer who is unable to list his property, a guardian, authorized agent, or other person having knowledge of and charged with the care of the person and property of the taxpayer shall file the completed abstract and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs.

(2) In the case of a corporation, partnership, limited liability company, or unincorporated association, a person specified in sub-subdivision a., b., or c. below, shall file the completed abstract and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs, and no other agent shall be permitted to sign the affirmation required on such a taxpayer's abstract:

a. A principal officer of the taxpayer.

b. A full-time employee of the taxpayer who has been officially empowered by a principal officer of the taxpayer in his behalf to list the taxpayer's property for taxation in the county and to sign the affirmation annexed to the abstract or abstracts on which its property is listed.

c. An agent of the taxpayer authorized by a principal officer of the taxpayer in a manner prescribed by the Department of Revenue.

(3) Repealed by Session Laws 2011-238, s. 5, effective June 23, 2011.

(b) Abstracts may be submitted in person or by mail. Additionally, if the county has provided for electronic listing of personal property under G.S. 105-310.1, personal property abstracts may be submitted by electronic listing.

(1) Submission by mail. – In no event shall an abstract submitted by mail be accepted unless the affirmation on the abstract is signed by the individual prescribed in subsection (a) of this section. For the purpose of this Subchapter, abstracts submitted by mail are considered filed 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 abstract is considered filed when received in the office of the assessor.

(2) Submission by electronic listing. – In no event shall an abstract submitted by electronic listing be accepted unless the affirmation on the abstract is signed by the individual prescribed in subsection (a) of this section. The affirmation may be signed using an electronic signature method approved by the Department of Revenue. For the purpose of this Subchapter, abstracts submitted by electronic listing are considered filed when received in the office of the assessor as denoted by timestamps applied by the receiving equipment or programs.

(c) In any dispute arising under this Subchapter, the burden of proof is on the taxpayer to show that the abstract was timely filed. (1939, c. 310, ss. 901, 903, 904; 1957, c. 848; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 327, s. 1; 1987, c. 43, s. 7; c. 45, s. 1; 2001-279, s. 3; 2001-487, s. 70; 2011-238, s. 5.)

§ 105-312. Discovered property; appraisal; penalty.

(a) Repealed by Session Laws 1991, c. 34, s. 4.

(b) Duty to Discover and Assess Unlisted Property. – It shall be the duty of the assessor to see that all property not properly listed during the regular listing period be listed, assessed and taxed as provided in this Subchapter. The assessor shall file reports of such discoveries with the board of commissioners in such manner as the board may require.

(c) Carrying Forward Real Property. – At the close of the regular listing period each year, the assessor shall compare the tax lists submitted during the listing period just ended with the lists for the preceding year, and he shall carry forward to the lists of the current year all real property that was listed in the preceding year but that was not listed for the current year. When carried forward, the real property shall be listed in the name of the taxpayer who listed it in the preceding year unless, under the provisions of G.S. 105-302, it must be listed in the name of another taxpayer. Real property carried forward in this manner shall be deemed to be discovered property, and the procedures prescribed in subsection (d), below, shall be followed unless the property discovered is listed in the name of the taxpayer who listed it for the preceding year and the property is not subject to appraisal under either G.S. 105-286 or G.S. 105-287 in which case no notice of the listing and valuation need be sent to the taxpayer.

(d) Procedure for Listing, Appraising, and Assessing Discovered Property. – Subject to the provisions of subsection (c), above, and the presumptions established by subsection (f), below, discovered property shall be listed by the assessor in the name of the person required by G.S. 105-302 or G.S. 105-306. The discovery shall be deemed to be made on the date that the abstract is made or corrected pursuant to subsection (e) of this section. The assessor shall also make a tentative appraisal of the discovered property in accordance with the best information available to him.

When a discovery is made, the assessor shall mail a notice to the person in whose name the discovered property has been listed. The notice shall contain the following information:

(1) The name and address of the person in whose name the property is listed;
(2) A brief description of the property;
(3) A tentative appraisal of the property;
(4) A statement to the effect that the listing and appraisal will become final unless written exception thereto is filed with the assessor within 30 days from date of the notice.

Upon receipt of a timely exception to the notice of discovery, the assessor shall arrange a conference with the taxpayer to afford him the opportunity to present any evidence or argument he may have regarding the discovery. Within 15 days after the conference, the assessor shall give written notice to the taxpayer of his final decision. Written notice shall not be required, however, if the taxpayer signs an agreement accepting the listing and appraisal. In cases in which agreement is not reached, the taxpayer shall have 15 days from the date of the notice to request review of the decision of the assessor by the board of equalization and review or, if that board is not in session, by the board of commissioners. Unless the request for review by the county board is given at the

conference, it shall be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, shall be followed.

(e) Record of Discovered Property. – When property is discovered, the taxpayer's original abstract (if one was submitted) may be corrected or a new abstract may be prepared to reflect the discovery. If a new abstract is prepared, it may be filed with the abstracts that were submitted during the regular listing period, or it may be filed separately with abstracts designated "Late Listings." Regardless of how filed, the listing shall have the same force and effect as if it had been submitted during the regular listing period.

(f) Presumptions. – When property is discovered and listed to a taxpayer in any year, it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless the taxpayer shall produce satisfactory evidence that the property was not in existence, that it was actually listed for taxation, or that it was not his duty to list the property during those years or some of them under the provisions of G.S. 105-302 and G.S. 105-306. If it is shown that the property should have been listed by some other taxpayer during some or all of the preceding years, the property shall be listed in the name of the appropriate taxpayer for the proper years, but the discovery shall still be deemed to have been made as of the date that the assessor first listed it.

(g) Taxation of Discovered Property. – When property is discovered, it shall be taxed for the year in which discovered and for any of the preceding five years during which it escaped taxation in accordance with the assessed value it should have been assigned in each of the years for which it is to be taxed and the rate of tax imposed in each such year. The penalties prescribed by subsection (h) of this section shall be computed and imposed regardless of the name in which the discovered property is listed. If the discovery is based upon an understatement of value, quantity, or other measurement rather than an omission from the tax list, the tax shall be computed on the additional valuation fixed upon the property, and the penalties prescribed by subsection (h) of this section shall be computed on the basis of the additional tax.

(h) Computation of Penalties. – Having computed each year's taxes separately as provided in subsection (g), above, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled on a single tax receipt.

(h1) Repealed by Session Laws 1991, c. 624, s. 8.

(i) Collection. – For purposes of tax collection and foreclosure, the total figure obtained and recorded as provided in subsection (h) of this section shall be deemed to be a tax for the fiscal year beginning on July 1 of the calendar year in which the property was discovered. The schedule of discounts for prepayment and interest for late payment applicable to taxes for the fiscal year referred to in the preceding sentence shall apply when the total figure on the single tax receipt is paid. Notwithstanding the time limitations contained in G.S. 105-381, any property owner who is required to pay taxes on discovered property as herein provided shall be entitled to a refund of any taxes erroneously paid on the same property to other taxing jurisdictions in North Carolina. Claim for refund shall be filed in the county where such tax was erroneously paid as provided by G.S. 105-381.

(j) Tax Receipts Charged to Collector. – Tax receipts prepared as required by subsections (h) and (i) of this section for the taxes and penalties imposed upon discovered property shall be

delivered to the tax collector, and he shall be charged with their collection. Such receipts shall have the same force and effect as if they had been delivered to the collector at the time of the delivery of the regular tax receipts for the current year, and the taxes charged in the receipts shall be a lien upon the property in accordance with the provisions of G.S. 105-355.

(k) Power to Compromise. – After a tax receipt computed and prepared as required by subsections (g) and (h) of this section has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act.

(l) Municipal Corporations. – The provisions of this section shall apply to all cities, towns, and other municipal corporations having the power to tax property. Such governmental units shall designate an appropriate municipal officer to exercise the powers and duties assigned by this section to the assessor, and the powers and duties assigned to the board of county commissioners shall be exercised by the governing body of the unit. When the assessor discovers property having a taxable situs in a municipal corporation, he shall send a copy of the notice of discovery required by subsection (d) to the governing body of the municipality together with such other information as may be necessary to enable the municipality to proceed. The governing board of a municipality may, by resolution, delegate the power to compromise, settle, or adjust tax claims granted by this subsection and by subsection (k) of this section to the county board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act. (1939, c. 310, s. 1109; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 787; 1977, c. 864; 1981, c. 623, ss. 1, 2; 1987, c. 45, s. 1; c. 743, ss. 1, 2; 1989, c. 522; 1991, c. 34, s. 4; c. 624, s. 8; 1991 (Reg. Sess., 1992), c. 961, s. 12; 1999-297, s. 2.)

Article 18.

Reports in Aid of Listing.

§ 105-313. Report of property by multi-county business.

A taxpayer who is engaged in business in more than one county in this State and who owns real property or tangible personal property in connection with his multi-county business shall, upon the request of the Department of Revenue or the assessor of a county in which part of this business property is situated, file a report with the Department of Revenue stating, as of the dates specified in G.S. 105-285 of any year, the following information:

(1) The counties in this State in which the taxpayer's business property is situated;

(2) The taxpayer's investment, on a county by county basis, in his business property situated in this State, categorized as the Department of Revenue or the assessor may require; and

(3) The taxpayer's total investment in his business property situated in this State, categorized as the Department of Revenue or the assessor may require.

This report shall be subscribed and sworn to by the owner of the property. If the owner is a corporation, partnership, or unincorporated association, the report shall be subscribed and sworn to by a principal officer of the owner who has knowledge of the facts contained in the report. (1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 777, s. 3.)

§ 105-314: Repealed by Session Laws 1991, c. 761, s. 37.4.

§ 105-315. Report by persons having custody of tangible personal property of others.

(a) As of January 1, every person having custody of taxable tangible personal property that has been entrusted to the person by another for storage, sale, renting, or any other business purpose shall furnish to the assessor of the county in which the property is situated a report with the information listed in this subsection. This requirement does not apply to a person having custody of inventories exempt under G.S. 105-275(32a), 105-275(33), or 105-275(34). As used in this section, the term "person having custody of taxable tangible personal property" includes warehouses, cooperative growers' and marketing associations, consignees, factors, commission merchants, and brokers. The report must include all of the following:

(1) Repealed by Session Laws 1987, c. 813, s. 14.
(2) The name of the owner of the property.
(3) A description of the property.
(4) The quantity of the property.
(5) The amount of money, if any, advanced against the property by the person having custody of the property.

(b) A person who fails to make the report required by this section, by January 15 in any year is liable to the counties in which the property is taxable for a penalty to be measured by any portion of the tax on the property that has not been paid at the time the action to collect this penalty is brought plus two hundred fifty dollars ($250.00). This penalty may be recovered in a civil action in the appropriate division of the General Court of Justice of the county in which the property is taxable. Upon recovery of this penalty, the tax on the property is deemed paid. (1939, c. 310, ss. 1001, 1002; 1955, c. 1069, ss. 2, 3; 1965, c. 592; 1971, c. 806, s. 1; 1987, c. 45, s. 1; c. 813, s. 14; 2014-3, s. 14.21.)

§ 105-316. Reports by house trailer park, marina, and aircraft storage facility operators.

(a) As of January 1 each year:

(1) Every operator of a park or storage lot renting or leasing space for three or more house trailers or mobile homes shall furnish to the assessor of the county in which the park or lot is located the name of the owner of and a description of each house trailer or mobile home situated thereon.
(2) Every operator of a marina or comparable facility renting, leasing, or otherwise providing dockage or storage space for three or more boats, vessels, floating homes, or floating structures shall furnish to the assessor of the county in which the marina or comparable facility is located the name of the owner of and a description of each boat, vessel, floating home, or floating structure for which dockage or storage space is rented, leased, or otherwise provided.
(3) Every operator of a storage facility renting or leasing space for three or more airplanes or other aircraft shall furnish to the assessor of the county in which the storage facility is located the name of the owner of and a description of each airplane or aircraft for which space is rented or leased.

(b) Any person who fails to make any report required by subsection (a), above, by January 15 of any year shall be liable to the county in which the house trailers, mobile homes, boats, vessels, floating homes, floating structures, or airplanes are taxable for a penalty to be measured by any portion of the tax on the personal property that has not been paid at the time the action to collect this penalty is brought, plus two hundred fifty dollars ($250.00). This penalty may be recovered in a civil action in the appropriate division of the General Court of Justice of the county in which the personal property is taxable. Upon recovery of this penalty, the tax on the personal property shall be deemed to be paid. (1939, c. 310, s. 1002; 1955, c. 1069, s. 3; 1965, c. 592; 1971, c. 806, s. 1; 1985, c. 378, ss. 1, 2; 1987, c. 45, s. 1.)

§ 105-316.1. Tax permit required to move mobile home.

(a) In order to protect the local taxing units of this State against the nonpayment of ad valorem taxes on mobile homes, it is hereby declared to be unlawful for any person other than a mobile home manufacturer or retailer to remove or cause to be removed any mobile home situated at a premises in this State without first obtaining a tax permit from the tax collector of the county in which the mobile home is situated. The tax permit shall be conspicuously displayed near the license tag on the rear of the mobile home at all times during its transportation. Permits required by G.S. 105-316.1 through 105-316.8 may be obtained at the office of the county tax collector during normal business hours.

(b) Except as provided in G.S. 105-316.4, manufacturers, retailers and licensed carriers of mobile homes shall not be required to obtain the tax permits required by this section. Persons or firms transporting mobile homes shall, however, be responsible for seeing that a proper license tag, and when required under this section, a tax permit, are properly displayed thereon at all times during their transportation. (1975, c. 881, s. 1; 1977, 2nd Sess., c. 1187, ss. 1, 2.)

§ 105-316.2. Requirements for obtaining permit.

(a) In order to obtain the permits herein provided, persons other than manufacturers and retailers of mobile homes shall be required to (i) pay all taxes due to be paid by the owner to the county or to any other taxing unit therein; or (ii) show proof to the tax collector that no taxes are due to be paid; or (iii) demonstrate to the tax collector that the removal of the mobile home will not jeopardize the collection of any taxes due or to become due to the county or to any taxing unit therein.

(b) In addition to complying with the provisions of subsection (a) above, owners of mobile homes required to obtain the permits herein provided shall also furnish the following information to the tax collector:

(1) The name and address of the owner,
(2) The address or location of the premises from which the mobile home is to be moved,
(3) The address or location of the place to which the mobile home is to be moved, and
(4) The name and address of the carrier who is to transport the mobile home. (1975, c. 881, s. 1.)

§ 105-316.3. Issuance of permits.

(a) Except as otherwise provided in G.S. 105-316.2 above, no permit required by G.S. 105-316.1 through 105-316.8 shall be issued by the tax collector unless and until all taxes due to

be paid by the owner to the county or to any other taxing unit therein, including any penalties or interest thereon, have been paid. Any taxes which have not yet been computed but which will become due during the current calendar year shall be determined as in the case of prepayments.

(b) Upon compliance with the provisions of G.S. 105-316.1 through 105-316.8, the tax collector shall issue, without charge, a permit authorizing the removal of the mobile home. He shall also maintain a record of all permits issued. (1975, c. 881, s. 1.)

§ 105-316.4. Issuance of permits under repossession.

Notwithstanding the provisions of G.S. 105-316.2(a) and 105-316.3(a), above, any person who intends to take possession of a mobile home, whether by judicial or nonjudicial authority, as a holder of a lien on said mobile home shall apply for, and be issued, the permit herein provided without paying all taxes due to be paid by the owner of the mobile home being repossessed, upon notifying the tax collector of the location in North Carolina to which the mobile home is to be taken. At the time of notification the tax collector shall render to the holder of the lien a statement of taxes due against only the mobile home. Within seven days of the issuance of the permit the applicant shall pay to the tax collector the taxes due as set forth in the statement.

Notwithstanding the foregoing, any applicant who is a nonresident of North Carolina must pay the taxes due as set forth above at the time of notification to the tax collector and application for the permit.

Upon issuance of the permit and the payment of any taxes as prescribed herein, the mobile home shall no longer be subject to levy or attachment of any lien for any other taxes then owed by the owner thereof, whether or not previously determined. (1975, c. 881, s. 1; 1977, 2nd Sess., c. 1187, s. 3.)

§ 105-316.5. Form of permit.

The permit shall be in substantially the following form:

TAX PERMIT

County of _____ Permit Number _____
State of North Carolina Date of Issuance _____
Permission is hereby granted to: _____
(Name & address of owner)

_____
(Name & address of carrier)

to remove the following described mobile home:

_____
(Make, model, size, serial number, etc.)

From: _____
(Address)

To: _____
(Address)

This permit is issued in accordance with the provisions of G.S. 105-316.1 through G.S. 105-316.8 of the General Statutes of North Carolina.

(Signed)

_____

Tax Collector
(or Deputy Tax Collector)

County of _____

(1975, c. 881, s. 1; 1977, 2nd Sess., c. 1187, s. 1.)

§ 105-316.6. Penalties for violations.

(a) Any person required by G.S. 105-316.1 through 105-316.8 to obtain a tax permit who fails to do so or who fails to properly display same shall be guilty of a Class 3 misdemeanor. This penalty shall be in addition to any penalties imposed for failure to list property for taxation and interest for failure to pay taxes provided by the general laws of this State.

(b) Any manufacturer or retailer of mobile homes who aids or abets any owner covered by G.S. 105-316.1 through 105-316.8 to defeat in any manner the purpose of G.S. 105-316.1 through 105-316.8 shall be guilty of a Class 3 misdemeanor.

(c) Any person who transports a mobile home from a location in this State for an owner other than a manufacturer or retailer of mobile homes without having properly displayed thereon the tax permit required by G.S. 105-316.1 through 105-316.8 shall be guilty of a Class 3 misdemeanor.

(d) Any law-enforcement officer of this State who apprehends any person violating the provisions of G.S. 105-316.1 through 105-316.8 shall detain such person and mobile home until satisfactory arrangements have been made to meet the requirements of G.S. 105-316.1 through 105-316.8. (1975, c. 881, s. 1; 1977, 2nd Sess., c. 1187, ss. 1, 4, 5; 1993, c. 539, s. 719; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-316.7. Mobile home defined.

For the purpose of G.S. 105-316.1 through 105-316.8, "mobile home" means a structure that (i) is designed, constructed, and intended for use as a dwelling house, office, place of business, or similar place of habitation and (ii) is capable of being transported from place to place on wheels attached to its frame. It also means a manufactured home as described in G.S. 105-273(13). This definition does not include trailers and vehicles required to be registered annually pursuant to Part 3, Article 3 of Chapter 20 of the General Statutes. (1975, c. 881, s. 1; 1987, c. 805, s. 4.)

§ 105-316.8. Taxable situs not presumed.

Nothing in G.S. 105-316.1 through 105-316.8 shall be interpreted so as to subject to taxation any mobile home which does not have a taxable situs within this State under the general rules of law appropriate to such a determination. (1975, c. 881, s. 1.)

Article 19.

Administration of Real and Personal Property Appraisal.

§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules.

(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

(1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.

(2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.

(3) To appraise partially completed buildings in accordance with the degree of completion on January 1.

(b) In preparation for each revaluation of real property required by G.S. 105-286, it shall be the duty of the assessor to see that:

(1) Uniform schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value are prepared and are sufficiently detailed to enable those making appraisals to adhere to them in appraising real property.

(2) Repealed by Session Laws 1981, c. 678, s. 1.

(3) A separate property record be prepared for each tract, parcel, lot, or group of contiguous lots, which record shall show the information required for compliance with the provisions of G.S. 105-309 insofar as they deal with real property, as well as that required by this section. (The purpose of this subdivision is to require that individual property records be maintained in sufficient detail to enable property owners to ascertain the method, rules, and standards of value by which property is appraised.)

(4) The property characteristics considered in appraising each lot, parcel, tract, building, structure and improvement, in accordance with the schedules of values, standards, and rules, be accurately recorded on the appropriate property record.

(5) Upon the request of the owner, the board of equalization and review, or the board of county commissioners, any particular lot, parcel, tract, building, structure or improvement be actually visited and observed to verify the accuracy of property characteristics on record for that property.

(6) Each lot, parcel, tract, building, structure and improvement be separately appraised by a competent appraiser, either one appointed under the provisions of G.S. 105-296 or one employed under the provisions of G.S. 105-299.

(7) Notice is given in writing to the owner that he is entitled to have an actual visitation and observation of his property to verify the accuracy of property characteristics on record for that property.

(c) The values, standards, and rules required by subdivision (b)(1) shall be reviewed and approved by the board of county commissioners before January 1 of the year they are applied. The board of county commissioners may approve the schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value either separately or

simultaneously. Notice of the receipt and adoption by the board of county commissioners of either or both the true value and present-use value schedules, standards, and rules, and notice of a property owner's right to comment on and contest the schedules, standards, and rules shall be given as follows:

(1) The assessor shall submit the proposed schedules, standards, and rules to the board of county commissioners not less than 21 days before the meeting at which they will be considered by the board. On the same day that they are submitted to the board for its consideration, the assessor shall file a copy of the proposed schedules, standards, and rules in his office where they shall remain available for public inspection.

(2) Upon receipt of the proposed schedules, standards, and rules, the board of commissioners shall publish a statement in a newspaper having general circulation in the county stating:

a. That the proposed schedules, standards, and rules to be used in appraising real property in the county have been submitted to the board of county commissioners and are available for public inspection in the assessor's office; and

b. The time and place of a public hearing on the proposed schedules, standards, and rules that shall be held by the board of county commissioners at least seven days before adopting the final schedules, standards, and rules.

(3) When the board of county commissioners approves the final schedules, standards, and rules, it shall issue an order adopting them. Notice of this order shall be published once a week for four successive weeks in a newspaper having general circulation in the county, with the last publication being not less than seven days before the last day for challenging the validity of the schedules, standards, and rules by appeal to the Property Tax Commission. The notice shall state:

a. That the schedules, standards, and rules to be used in the next scheduled reappraisal of real property in the county have been adopted and are open to examination in the office of the assessor; and

b. That a property owner who asserts that the schedules, standards, and rules are invalid may except to the order and appeal therefrom to the Property Tax Commission within 30 days of the date when the notice of the order adopting the schedules, standards, and rules was first published.

(d) Before the board of county commissioners adopts the schedules of values, standards, and rules, the assessor may collect data needed to apply the schedules, standards, and rules to each parcel in the county. (1939, c. 310, s. 501; 1959, c. 704, s. 4; 1967, c. 944; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 5; 1981, c. 224; c. 678, s. 1; 1985, c. 216, s. 2; c. 628, s. 4; 1987, c. 45, s. 1; c. 295, s. 1; 1997-226, s. 5.)

§ 105-317.1. (Effective for taxes imposed for taxable years beginning before July 1, 2019) Appraisal of personal property; elements to be considered.

(a) Whenever any personal property is appraised it shall be the duty of the persons making appraisals to consider the following as to each item (or lot of similar items):

(1) The replacement cost of the property;
(2) The sale price of similar property;
(3) The age of the property;
(4) The physical condition of the property;
(5) The productivity of the property;
(6) The remaining life of the property;
(7) The effect of obsolescence on the property;
(8) The economic utility of the property, that is, its usability and adaptability for industrial, commercial, or other purposes; and
(9) Any other factor that may affect the value of the property.

(b) In determining the true value of taxable tangible personal property held and used in connection with the mercantile, manufacturing, producing, processing, or other business enterprise of any taxpayer, the persons making the appraisal shall consider any information as reflected by the taxpayer's records and as reported by the taxpayer to the North Carolina Department of Revenue and to the Internal Revenue Service for income tax purposes, taking into account the accuracy of the taxpayer's records, the taxpayer's method of accounting, and the level of trade at which the taxpayer does business.

(c) A taxpayer who owns personal property taxable in the county may appeal the value, situs, or taxability of the property within 30 days after the date of the initial notice of value. If the assessor does not give separate written notice of the value to the taxpayer at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal property. The notice must contain a statement that the taxpayer may appeal the value, situs, or taxability of the property within 30 days after the date of the notice. Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the opportunity to present any evidence or argument regarding the value, situs, or taxability of the property. Within 30 days after the conference, the assessor must give written notice to the taxpayer of the assessor's final decision. Written notice of the decision is not required if the taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's final decision to request review of that decision by the board of equalization and review or, if that board is not in session, by the board of county commissioners. Unless the request for review is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be followed. (1971, c. 806, s. 1; 1987, c. 813, s. 15; 2002-156, s. 2.)

§ 105-317.1. (Effective for taxes imposed for taxable years beginning on or after July 1, 2019) Appraisal of personal property; elements to be considered.

(a) Appraisal Elements. – Whenever any personal property is appraised it shall be the duty of the persons making appraisals to consider the following as to each item (or lot of similar items):

(1) The replacement cost of the property;
(2) The sale price of similar property;
(3) The age of the property;

(4) The physical condition of the property;
(5) The productivity of the property;
(6) The remaining life of the property;
(7) The effect of obsolescence on the property;
(8) The economic utility of the property, that is, its usability and adaptability for industrial, commercial, or other purposes; and
(9) Any other factor that may affect the value of the property.

(b) Business Property. – In determining the true value of taxable tangible personal property held and used in connection with the mercantile, manufacturing, producing, processing, or other business enterprise of any taxpayer, the persons making the appraisal shall consider any information as reflected by the taxpayer's records and as reported by the taxpayer to the North Carolina Department of Revenue and to the Internal Revenue Service for income tax purposes, taking into account the accuracy of the taxpayer's records, the taxpayer's method of accounting, and the level of trade at which the taxpayer does business.

(b1) Farm Equipment. – In determining the true value of taxable farm equipment, the person making the appraisal may use any of the appraisal methods listed in subsection (a) of this section and must consider relevant taxpayer information as required under subsection (b) of this section. The Department must publish a depreciation schedule for farm equipment to assist counties that use the cost approach to appraise this equipment. The Department must make the schedule available electronically on its Web site. A county that uses a cost approach method to appraise this equipment must use the depreciation schedule published pursuant to this subsection.

(c) Appeal Process. – A taxpayer who owns personal property taxable in the county may appeal the value, situs, or taxability of the property within 30 days after the date of the initial notice of value. If the assessor does not give separate written notice of the value to the taxpayer at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal property. The notice must contain a statement that the taxpayer may appeal the value, situs, or taxability of the property within 30 days after the date of the notice. Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the opportunity to present any evidence or argument regarding the value, situs, or taxability of the property. Within 30 days after the conference, the assessor must give written notice to the taxpayer of the assessor's final decision. Written notice of the decision is not required if the taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's final decision to request review of that decision by the board of equalization and review or, if that board is not in session, by the board of county commissioners. Unless the request for review is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be followed. (1971, c. 806, s. 1; 1987, c. 813, s. 15; 2002-156, s. 2; 2018-113, s. 14(a).)

§ 105-317.2. Report on transfers of real property.

To facilitate the accurate appraisal of real property for taxation, the information listed in this section must be included in each deed conveying property. The following information is required:

(1) The name of each grantor and grantee and the mailing address of each grantor and grantee.

(2) A statement whether the property includes the primary residence of a grantor.

Failure to comply with this section does not affect the validity of a duly recorded deed. This section does not apply to deeds of trust, deeds of release, or similar instruments. (2009-454, s. 1.)

Article 20.

Approval, Preparation, Disposition of Records.

§ 105-318. Forms for listing, appraising, and assessing property.

The Department of Revenue may design and prescribe the books and forms to be used throughout the State in the listing, appraising, and assessing of property for taxation. If the board exercises the authority granted by the preceding sentence, it is authorized to make arrangements for the purchase and distribution of approved books and forms through the Division of Purchase and Contract, the cost thereof to be billed to the counties. If the Department does not exercise the authority granted by the first sentence of this section, each county and municipality shall submit the books and forms it proposes to adopt for these purposes to the Department for approval before they are employed. (1939, c. 310, s. 907; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-319. Tax records; preparation of scroll and tax book.

(a) For each year there shall be prepared for each county and tax-levying municipality a scroll (showing property valuations) and a tax book (showing the amount of taxes due) or a combined record (showing both property valuation and taxes due). The governing body of the county or municipality shall have authority to determine whether the tax records shall be prepared in combined form or in a separate scroll and tax book. When used in this Subchapter, the term "tax records" shall mean the scroll, tax book, and combined record. No tax records shall be adopted by any county or municipality until they have been approved by the Department of Revenue.

(b) County tax records shall, unless otherwise authorized by the board of county commissioners, be prepared separately for each township. The tax records of both counties and municipalities shall, unless otherwise authorized by the unit governing body, be divided into two parts:

(1) Individual taxpayers (including corporate fiduciaries when, in their fiduciary capacity, they list the property of individuals).

(2) Corporations, partnerships, other business firms, unincorporated associations, and all other taxpayers other than individual persons.

(c) The tax records shall show at least the following information:

(1) In alphabetical order, the name of each taxpayer whose property is listed and assessed for taxation.

(2) The assessment of each taxpayer's real property listed for unit-wide taxation (divided into as many categories as the Department of Revenue may prescribe).

(3) The assessment of each taxpayer's personal property listed for unit-wide taxation (divided into as many categories as the Department of Revenue may prescribe).

(4) The total assessed value of each taxpayer's real and personal property listed for unit-wide purposes.

(5) The amount of ad valorem tax due by each taxpayer for unit-wide purposes.
(6) The amount of dog license tax due by each taxpayer.
(7) The total assessed value of each taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit.
(8) The amount of ad valorem tax due by each taxpayer to any special district or subdivision of the unit.
(9) The amount of penalties, if any, imposed under the provisions of G.S. 105-312.
(10) The total amount of all taxes and penalties due by each taxpayer to the unit and to special districts and subdivisions of the unit.

(d) Listings and assessments and any changes therein made during the period between the close of the regular listing period and the first meeting of the board of equalization and review, as well as those made during the regular listing period, shall be entered on the county tax records, and the county tax records shall be submitted to the board of equalization and review at its first meeting. Additions and changes made by the board of equalization and review shall be entered on the county tax records in accordance with the provisions of G.S. 105-326. Municipal corporations shall be governed by the provisions of G.S. 105-326 through 105-328 with regard to matters dealt with in this subsection (d). (1939, c. 310, s. 1101; 1963, c. 784, s. 1; 1969, c. 1279; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-320. Tax receipts; preparation.

(a) No taxing unit shall adopt a tax receipt form until it has been approved by the Department of Revenue, and no tax receipt form shall be approved unless it shows at least the following information:

(1) The name and mailing address of the taxpayer charged with taxes.
(2) The assessment of the taxpayer's real property listed for unit-wide taxation.
(3) The assessment of the taxpayer's personal property listed for unit-wide taxation.
(4) The total assessed value of the taxpayer's real and personal property listed for unit-wide taxation.
(5) The total assessed value of the taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit.
(6) The rate of tax levied for each unit-wide purpose, the total rate levied for all unit-wide purposes, and the rate levied by or for any special district or subdivision of the unit in which the taxpayer's property is subject to taxation. (In lieu of showing this information on the tax receipt, it may be furnished on a separate sheet of paper, properly identified, at the time the official receipt is delivered upon payment).
(7) The amount of ad valorem tax due by the taxpayer for unit-wide purposes.
(8) The amount of ad valorem tax due by the taxpayer to any special district or subdivision of the unit.
(9) The amount of dog license tax due by the taxpayer.
(10) The amount of penalties, if any, imposed under the provisions of G.S. 105-312.
(11) The total amount of all taxes and penalties due by the taxpayer to the unit and to special districts and subdivisions of the unit.
(12) The amount of discount allowed for prepayment of taxes under the provisions of G.S. 105-360.

(13) The amount of interest charged for late payment of taxes under the provisions of G.S. 105-360.
(14) Repealed by Session Laws 1987, c. 813, s. 16.
(15) Repealed by 1987 (Regular Session, 1988), c. 1041, s. 1.2.
(16) Repealed by Session Laws 2014-3, s. 14.20(b), effective May 29, 2014.

(b) Repealed by Session Laws 2018-5, s. 38.10(i), effective June 12, 2018.

(c) The governing body of the county or municipality shall designate the person or persons who shall compute and prepare the tax receipt for all taxes charged upon the tax records. (1939, c. 310, s. 1102; 1961, c. 380; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1985, c. 656, s. 23; 1985 (Reg. Sess., 1986), c. 947, s. 6; 1987, c. 813, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1041, ss. 1.2, 1.3; 1991, c. 45, s. 14(c); 2014-3, s. 14.20(b); 2018-5, s. 38.10(i).)

§ 105-321. Disposition of tax records and receipts; order of collection.

(a) County tax records shall be filed in the office of the assessor unless the board of county commissioners shall require them to be filed in some other public office of the county. City and town tax records shall be filed in some public office of the municipality designated by the governing body of the city or town. In the discretion of the governing body, a duplicate copy of the tax records may be delivered to the tax collector at the time he is charged with the collection of taxes.

(b) Before delivering the tax receipts to the tax collector in any year, the board of county commissioners or municipal governing body shall adopt and enter in its minutes an order directing the tax collector to collect the taxes charged in the tax records and receipts. A copy of this order shall be delivered to the tax collector at the time the tax receipts are delivered to him, but the failure to do so shall not affect the tax collector's rights and duties to employ the means of collecting taxes provided by this Subchapter. The order of collection shall have the force and effect of a judgment and execution against the taxpayers' real and personal property and shall be drawn in substantially the following form:

State of North Carolina
County (or City or Town) of _____
To the Tax Collector of the County (or City or Town) of _____
_____:

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the office of _____ and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the County (or City or Town) of _____ , and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this ____ day of _____, _____

_____(Seal)
Chairman, Board of Commissioners of

_____ County
(Mayor, City (or Town) of _____)

Attest:

_____
Clerk of Board of Commissioners of _____ County
(Clerk of the City (or Town) of _____)

(c) The original tax receipts, together with any duplicate copies that may have been prepared, shall be delivered to the tax collector by the governing body on or before the first day of September each year if the tax collector has made settlement as required by G.S. 105-352. The tax collector shall give his receipt for the tax receipts and duplicates delivered to him for collection.

(d) Repealed by Session Laws 2006-30, s. 5, effective June 29, 2006.

(e) The governing body of a taxing unit may contract with a bank or other financial institution for receipt of payment of taxes payable at par and of delinquent taxes and interest for the current tax year. A financial institution may not issue a receipt for any tax payments received by it, however. Discount for early payment of taxes shall be allowed by a financial institution that contracts with a taxing unit pursuant to this subsection to the same extent as allowed by the tax collector. A financial institution that contracts with a taxing unit for receipt of payment of taxes shall furnish a bond to the taxing unit conditioned upon faithful performance of the contract in a form and amount satisfactory to the governing body of the taxing unit. A governing body of a taxing unit that contracts with a financial institution pursuant to this subsection shall publish a timely notice of the institution at which taxpayers may pay their taxes in a newspaper having circulation within the taxing unit. No notice is required, however, if the financial institution receives payments only through the mail.

(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 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.

(g) Minimal Refunds. – The governing body of a taxing unit that collects its own taxes may, by resolution, direct the taxing unit not to mail a refund for an overpayment of

tax if the refund is less than fifteen dollars ($15.00). Upon adoption of a resolution pursuant to this subsection, the taxing unit shall keep a record of all minimal refunds by receipt number and amount and shall make a report of the amount of these refunds to the governing body at the time of the settlement and shall implement a system by which payment of the refund may be made to a taxpayer who comes into the office of the taxing unit seeking the refund. Unless the taxpayer requests the minimal refund in person at the office of the taxing unit before the end of the fiscal year in which the refund is due, the taxing unit must implement a system to apply the minimal refund as a credit against the tax liability of the taxpayer for taxes due to the taxing unit for the next succeeding year. An overpayment of tax bears interest at the rate set under G.S. 105-241.21 from the date the interest begins to accrue until a refund is paid or applied in accordance with this section. Interest accrues from the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit. (1939, c. 310, s. 1103; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 615; 1987, c. 45, s. 1; 1989, c. 578, s. 1; 1991, c. 584, s. 1; 1995, c. 24, s. 1; c. 329, ss. 1, 2; 1999-456, s. 59; 2006-30, s. 5; 2012-79, s. 3.1; 2015-266, s. 2.)

Article 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review.

(a) Personnel. – Except as otherwise provided herein, the board of equalization and review of each county shall be composed of the members of the board of county commissioners.

Upon the adoption of a resolution so providing, the board of commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board. The board of commissioners shall also designate the chairman of the special board. The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners. The resolution shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.

Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.

(b) Compensation. – The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. – Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the board of equalization and review to be

influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.

(d) Clerk and Minutes. – The assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, and shall give to the board such information as he may have or can obtain with respect to the listing and valuation of taxable property in the county.

(e) Time of Meeting. – Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. Except as provided in subdivision (g)(5) of this section, the board may not sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below.

(f) Notice of Meetings and Adjournment. – A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment.

(g) Powers and Duties. – The board of equalization and review has the following powers and duties:

(1) Duty to Review Tax Lists. – The board shall examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.

b. Correct all errors in the names of persons and in the description of properties subject to taxation.

c. Increase or reduce the appraised value of any property that, in the board's opinion, has been listed and appraised at a figure that is below

or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

d. Cause to be done whatever else is necessary to make the lists and tax records comply with the provisions of this Subchapter.

e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.

f. Give written notice to the taxpayer at the taxpayer's last known address in the event the board, by appropriate order, increases the appraisal of any property or lists for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).

(2) Duty to Hear Taxpayer Appeals. – On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of the taxpayer's property or the property of others.

a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.

b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.

c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on the taxpayer's appeal not later than 30 days after the board's adjournment.

(3) Powers in Carrying Out Duties. – In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may

also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by the taxpayer if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chair of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.

(4) Power to Submit Reports. – Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal.

(5) Duty to Change Abstracts and Records After Adjournment. – Following adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this subsection, the board may continue to meet to carry out the following duties:

a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).

c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation.

d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c). (1939, c. 310, s. 1105; 1965, c. 191; 1967, c. 1196, s. 6; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 863; 1987, c. 45, s. 1; 1989, c. 79, s. 3; c. 176, s. 1; c. 196; 1991, c. 110, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 22; 1993, c. 539, s. 720; 1994, Ex. Sess., c. 24, s. 14(c); 2001-139, ss. 6, 7; 2002-156, s. 3.)

§ 105-323. Giving effect to decisions of the board of equalization and review.

All changes in listings, names, descriptions, appraisals, and assessments made by the board of equalization and review shall be reflected upon the abstracts and tax records by insertion of rebates given, additional charges made, or any other insertion; by correction; or by any other charge. The tax records shall then be totalled, and at least a majority of the members of the board of equalization and review shall sign the following statement to be inserted at the end of the tax records:

State of North Carolina
County of _____

We, the undersigned members of the Board of Equalization and Review of _____ County, hereby certify that these tax records constitute the fixed and permanent tax list and assessment roll and record of taxes due for the year _____, subject to only such changes as may be allowed by law.

_____

_____

Members of the Board of Equalization
and Review of _____ County

The omission of this endorsement shall not affect the validity of the tax records or of any taxes levied on the basis of the assessments appearing in them. (1939, c. 310, s. 1106; 1971, c. 806, s. 1; 1999-456, s. 59.)

§ 105-324. Repealed by Session Laws 1987, c. 295, s. 4.

§ 105-325. Powers of board of county commissioners to change abstracts and tax records after board of equalization and review has adjourned.

(a) After the board of equalization and review has finished its work and the changes it effected or ordered have been entered on the abstracts and tax records as required by G.S. 105-323, the board of county commissioners shall not authorize any changes to be made on the abstracts and tax records except as follows:

(1) To give effect to decisions of the Property Tax Commission on appeals taken under G.S. 105-290.

(2) To add to the tax records any valuation certified by the Department of Revenue for property appraised in the first instance by the Department or to give effect to corrections made in such appraisals by the Department.

(3) Subject to the provisions of subdivisions (a)(3)a and (a)(3)b, below, to correct the name of any taxpayer appearing on the abstract or tax records erroneously; to substitute the name of the person who should have listed property for the name appearing on the abstract or tax records as having listed the property; and to correct an erroneous description of any property appearing on the abstract or tax records.

a. Any correction or substitution made under the provisions of this subdivision (a)(3) shall have the same force and effect as if the name of the taxpayer or description of the property had been correctly listed in the first instance, but the provisions of this subdivision (a)(3)a shall not be construed as a limitation on the taxation and penalization of discovered property required by G.S. 105-312.

b. If a correction or substitution under this subdivision (a)(3) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the change is entered on the abstract or tax records.

(4) To correct appraisals, assessments, and amounts of taxes appearing erroneously on the abstracts or tax records as the result of clerical or mathematical errors. (If the clerical or mathematical error was made by the taxpayer, his agent, or an officer of the taxpayer and if the correction demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of G.S. 105-312 shall apply.)

(5) To add to the tax records and abstracts or to correct the tax records and abstracts to include property discovered under the provisions of G.S. 105-312 or property exempted or excluded from taxation pursuant to G.S. 105-282.1(a)(4).

(6) Subject to the provisions of subdivisions (a)(6)a, (a)(6)b, (a)(6)c, and (a)(6)d, below, to appraise or reappraise property when the assessor reports to the board that, since adjournment of the board of equalization and review, facts have come to his attention that render it advisable to raise or lower the appraisal of some particular property of a given taxpayer in the then current calendar year.

a. The power granted by this subdivision (a)(6) shall not authorize appraisal or reappraisal because of events or circumstances that have taken place or arisen since the day as of which property is to be listed.

b. No appraisal or reappraisal shall be made under the authority of this subdivision (a)(6) unless it could have been made by the board of equalization and review had the same facts been brought to the attention of that board.

c. If a reappraisal made under the provisions of this subdivision (a)(6) demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of G.S. 105-312 shall apply.

d. If an appraisal or reappraisal made under the provisions of this subdivision (a)(6) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the appraisal or reappraisal shall become final.

(7) To give effect to decisions of the board of county commissioners on appeals taken under G.S. 105-322(a).

(b) The board of county commissioners may give the assessor general authority to make any changes authorized by subsection (a), above, except those permitted under subdivision (a)(6), above.

(c) Orders of the board of county commissioners and actions of the assessor upon delegation of authority to him by the board that are made under the provisions of this section may be appealed to the Property Tax Commission under the provisions of G.S. 105-290. (1939, c. 310, s. 1108; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 45, s. 1, c. 295, s, 8, c. 680, s. 6; 1989, c. 176, s. 2.)

§ 105-325.1. Special committee for motor vehicle appeals.

The board of county commissioners may appoint a special committee of its members or other persons to hear and decide appeals arising under G.S. 105-330.2(b). The county shall bear the expense of employing the committee. (1991 (Reg. Sess., 1992), c. 961, s. 9.)

Article 22.

Listing, Appraising, and Assessing by Cities and Towns.

§ 105-326. Listing property for city and town taxation; duty of owner; authority of governing body to obtain lists from county.

(a) All property subject to ad valorem taxation in any city or town shall be listed annually during the period prescribed by G.S. 105-307 in the city or town in which it is taxable in the name of the person required by G.S. 105-302 and 105-306 on an abstract prepared according to G.S. 105-309 and affirmed as required by G.S. 105-310. In lieu of requiring property owners to list their property with the city or town, the governing body of any city or town may make provision for obtaining from the abstracts and tax records of the county in which the municipality is situated lists of the property subject to taxation by the city or town.

(b) Regardless of whether a city or town adopts the alternative provided in the second sentence of subsection (a), above, the provisions of G.S. 105-311 and 105-312 shall apply to the listing of property for municipal taxation, as shall the penalties imposed by G.S. 105-308 and 105-312 for failure to list. In the preparation of abstracts, tax records, and tax receipts the city or town shall be governed by the provisions of G.S. 105-318, 105-319, 105-320, and 105-321. The powers and duties assigned to the assessor by the statutes cited as being applicable to municipalities shall be imposed upon and exercised by some official designated by the governing body of the city or town, and the powers and duties assigned therein to the board of county commissioners shall be imposed upon and exercised by the governing body of the city or town. (1939, c. 310, s. 1201; 1971, c. 806, s. 1; 1987, c. 45, s. 1.)

§ 105-327. Appraisal and assessment of property subject to city and town taxation.

For the property it is entitled to tax, a city or town situated in a single county shall accept and adopt the appraisals and assessments fixed by the authorities of that county as modified by the Department of Revenue under the provisions of this Subchapter. However, the requirement of this section shall not be construed to modify the appraisal and assessment authority given cities and towns with respect to discovered property by G.S. 105-312. (1939, c. 310, s. 1201; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.

(a) For purposes of municipal taxation, all property subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body shall determine that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order

to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection (a), above, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294. Pursuant to Article VI, Sec. 9, of North Carolina Constitution, the office of municipal assessor is hereby declared to be an office that may be held concurrently with any other appointive office.

(2) With the approval of the governing body, a municipal assessor may employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor. (1939, c. 310, s. 1202; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 13; 1987, c. 43, s. 8; c. 45, s .1; c. 46, s. 2.)

§ 105-329: Repealed by Session Laws 1991 (Regular Session, 1992), c. 961, s. 2.

Article 22A.

Motor Vehicles.

§ 105-330. Definitions.

The following definitions apply in this Article:

(1) Classified motor vehicle. – A motor vehicle classified under this Article.

(1a) Collecting authority. – The Division of Motor Vehicles or an agent contracting with the Division of Motor Vehicles.

(2) Motor vehicle. – Defined in G.S. 20-4.01(23).

(2a) Municipal corporation. – Defined in G.S. 105-273(11).

(3) Public service company. – Defined in G.S. 105-333(14).

(4) Registered classified motor vehicle. – Any of the following:

a. A classified motor vehicle that has a registration plate issued under Article 3 of Chapter 20 of the General Statutes and whose registration is current.

b. A classified motor vehicle transferred to an owner who has applied for a registration plate for the motor vehicle.

(5) Registration fees. – Fees set out in G.S. 20-87 and G.S. 20-88.

(6) Unregistered classified motor vehicle. – A classified motor vehicle that is not a registered classified motor vehicle. (1991, c. 624, s. 1; 2005-294, s. 1; 2006-259, s. 31.5; 2007-527, s. 22(b); 2008-134, s. 65; 2009-445, s. 24(a); 2010-95, s. 22(c); 2011-330, s. 42(a); 2012-79, s. 3.6; 2013-414, s. 70(b), (d).)

§ 105-330.1. Classification of motor vehicles.

(a) Classification. – All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and are considered classified motor vehicles. Classified motor vehicles must be listed and assessed as provided in this Article and taxes on classified motor vehicles must be collected as provided in this Article.

(b) Exceptions. – The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.

(2) Manufactured homes, mobile classrooms, and mobile offices.

(3) Semitrailers or trailers registered on a multiyear basis.

(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.

(5) Repealed by Session Laws 2000, c. 140, s. 75(a), effective July 1, 2000.

(6) Motor vehicles registered under the International Registration Plan.

(7) Motor vehicles issued permanent registration plates under G.S. 20-84.

(8) Self-propelled property-carrying vehicles issued three-month registration plates at the farmer rate under G.S. 20-88.

(9) Motor vehicles owned by participants in the Address Confidentiality Program authorized under Chapter 15C of the General Statutes. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 3; 1993, c. 485, s. 18; c. 543, s. 4; 1993

(Reg. Sess., 1994), c. 745, s. 1; 2000-140, s. 75(a); 2007-471, s. 6; 2009-445, ss. 24(a), 25(a); 2010-95, s. 22(c), (d); 2013-414, ss. 70(b), (c), 72.)

§ 105-330.2. Appraisal, ownership, and situs.

(a) Determination Date for Registered Vehicle. – The ownership, situs, and taxability of a registered classified motor vehicle is determined annually as of the date on which the vehicle's current registration is renewed, regardless of whether the registration is renewed after it has expired, or on the date an application for a new registration is submitted. The situs of a registered classified motor vehicle may not be changed until the next registration date. The value of a registered classified motor vehicle is determined as follows:

(1) For a registration expiring or an application for a new registration during the period January 1 through August 31, the value is determined as of January 1 of the current year.

(2) For a registration expiring or an application for a new registration during the period September 1 through December 31, the value is determined as of January 1 of the following year.

(3) For a new motor vehicle whose value cannot be determined as of January 1 of the year specified in subdivision (1) or (2) of this subsection, the value is determined as of the date that model of motor vehicle is first offered for sale at retail in this State.

(4) For a motor vehicle whose value cannot be determined as of the date set under any other subdivision in this subsection, the value is determined using the most currently available January 1 retail value of the vehicle.

(a1) Determination Date for Unregistered Vehicle. – The ownership, situs, and taxability of an unregistered classified motor vehicle is determined as of January 1 of the year in which the registration of the motor vehicle expires and is not renewed or the motor vehicle is acquired and the owner does not submit an application for registration. The value of an unregistered classified motor vehicle is determined as of January 1 of the year the vehicle is required to be listed.

(b) Value. – An assessor must appraise a classified motor vehicle at its true value in money as prescribed by G.S. 105-283. The sales price of a classified motor vehicle purchased from a dealer, including all accessories attached to the vehicle when it is delivered to the purchaser, is considered the true value of the vehicle, and the assessor must appraise the vehicle at this value. The sales price excludes the tax imposed under Article 5A of this Chapter. The Property Tax Division of the Department of Revenue must annually adopt a schedule of values, standards, and rules to be used in the valuation of all other classified motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles.

(b1) Valuation Appeal. – The owner of a classified motor vehicle may appeal the appraised value 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 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 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 in 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 in G.S. 105-312(d).

(c) Repealed by Session Laws 2008-134, s. 61, effective July 28, 2008. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 4; 1995, c. 510, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 24; 1997-6, s. 10; 1999-353, s. 1; 2005-294, s. 2; 2005-303, s. 1; 2006-259, s. 31.5; 2007-527, s. 22(b); 2008-134, ss. 61, 65; 2009-445, s. 24(a); 2010-95, s. 22(c); 2011-330, s. 42(a); 2012-79, ss. 3.2, 3.6; 2013-414, ss. 70(b), (d), 71(a), (b).)

§ 105-330.3. 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 before the end of the fiscal year for which it was 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) **(Effective for taxes imposed for taxable years beginning before July 1, 2017)** 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.

(2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2017)** 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 taxes are computed.

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 September 1 following the date the notice was prepared. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date are subject to interest charges. Interest accrues on taxes paid on or after January 6 pursuant to G.S. 105-360.

e. Repealed by Session Laws 2017-204, s. 5.1(a), effective for taxable years beginning on or after July 1, 2017.

(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.

(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 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.

(c) Duty to report changes. – The owner of a classified motor vehicle that has been omitted from the tax records as provided in subsection (b) of this section must report to the assessor any classified motor vehicle registered in the owner's name or owned by that person but not registered in the person's name that does not qualify for exemption or exclusion for the current year. This report must be made within 30 days after the renewal of registration or initial registration of the vehicle or, for an unregistered vehicle, on or before January 31 of the year in which the vehicle is required to be listed by subsection (a1) of this section. A classified motor vehicle that does not qualify for exemption or exclusion but has been omitted from the tax records as provided in subsection (b) is subject to discovery under the provisions of G.S. 105-312, except that in lieu of the penalties prescribed by G.S. 105-312(h) a penalty of one hundred dollars ($100.00) is assessed for each registration period that elapsed before the disqualification was discovered.

(d) Criminal Sanction. – A person who willfully attempts, or who willfully aids or abets another person to attempt, in any manner to evade or defeat the taxes subject to this Article, whether by removal or concealment of property or otherwise, is guilty of a Class 2 misdemeanor. (1991, c. 624, s. 1; 2008-134, s. 62; 2009-445, s. 24(a); 2010-95, s. 22(c); 2012-79, s. 3.3; 2013-414, ss. 70(b), 71(a), (c); 2017-204, s. 5.1(a).)

§ 105-330.4. Due date, interest, and enforcement remedies.

(a) Due Date. – The registration of a classified motor vehicle may not be issued unless a temporary registration plate is issued for the motor vehicle under G.S. 20-79.1A or the taxes for the motor vehicle's tax year that begins after the issuance of the registration are paid upon registration. A registration of a classified motor vehicle may not be renewed unless the taxes for the motor vehicle's tax year that begins after the registration expires are paid upon registration. If the registration of a classified motor vehicle is renewed earlier than the date the taxes are due, the taxes must be paid as if they were due. Taxes on a classified motor vehicle are due as follows:

(1) For an unregistered classified motor vehicle, the taxes are due on September 1 following the date by which the vehicle was required to be listed.

(2) For a registered classified motor vehicle that is registered under the staggered system, the taxes are due each year on the date the owner applies for a new registration or the fifteenth day of the month following the month in which the registration renewal sticker expires pursuant to G.S. 20-66(g).

(3) For a registered classified motor vehicle that is registered under the annual system, taxes are due on the date the owner applies for a new registration or 45 days after the registration expires.

(4) For a registered classified motor vehicle that has a temporary registration plate issued under G.S. 20-79.1 or a limited registration plate issued under G.S. 20-79.1A, the taxes are due on the last day of the second month following the date the owner applied for the plate.

(a1) Repealed by Session Laws 2009-445, s. 24(a), effective July 1, 2013, and applicable to combined tax and registration notices issued on or after that date.

(b) Interest. – Interest accrues on unpaid taxes and unpaid registration fees for registered classified motor vehicles at the rate of five percent (5%) for the remainder of the

month the taxes are due under subsection (a) of this section. Interest does not accrue for the first month following the due date. Interest accrues at the rate of three-fourths percent (3/4%) beginning the second month following the due date and for each following month until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest accrues on delinquent taxes on unregistered classified motor vehicles as provided in G.S. 105-360(a) and the discounts allowed in G.S. 105-360(a) apply to the payment of the taxes.

(c) Remedies. – The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle and to unpaid taxes on a registered classified motor vehicle for which the tax year begins before October 1, 2013.

(d) Payments. – 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 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.

(e) Waiver. – Notwithstanding G.S. 105-380, the governing board of a county may adopt a resolution to create a uniform policy to allow the reduction or waiver of interest or penalties on delinquent motor vehicle taxes for registered classified motor vehicles for tax years prior to July 1, 2013. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 5; 1995, c. 510, s. 2; 2001-139, s. 8; 2005-294, ss. 3, 4, 5; 2006-259, s. 31.5; 2007-471, s. 3; 2007-527, s. 22(b); 2008-134, s. 65; 2009-445, ss. 24(a), 25(a); 2010-95, s. 22(c), (d); 2011-330, ss. 40, 42(a); 2012-79, ss. 3.4, 3.6; 2013-414, ss. 70(b)-(d), 71(a), (d); 2015-204, s. 1.)

§ 105-330.5. Notice required; distribution and collection fees.

(a) Notice for Registered Vehicle. – The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division must prepare a combined tax and registration notice for each registered classified motor vehicle. The combined tax and registration notice must contain all county and municipal corporation taxes and fees due on the motor vehicle as computed by the assessor in the county of registration. If the motor vehicle has a temporary or limited registration plate issued under G.S. 20-79.1 or G.S. 20-79.1A, the combined tax and registration notice must state that the vehicle registration fees for the plate have been paid and that the vehicle's registration becomes valid for the remainder of the year upon payment of the county and municipal corporation taxes and fees that are due. A combined tax and registration notice that sets out the required information on a vehicle issued a limited registration plate constitutes the registration certificate for that vehicle.

In computing the taxes, the assessor must appraise the motor vehicle in accordance with G.S. 105-330.2 and 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. The tax on the motor vehicle is the product of a fraction and the number of months in the motor 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. This

procedure constitutes the listing and assessment of each classified motor vehicle for taxation.

The combined tax and registration notice must contain the following:

(1) The appraised value of the motor vehicle.

(2) The tax rate of each taxing unit.

(3) A statement that the appraised value and the taxability of the motor vehicle may be appealed to the assessor in writing within 30 days of the due date.

(4) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.

(5) Instructions for payment.

(a1) Proration. – When a new registration is obtained for a registered classified motor vehicle that is registered under the annual system, the taxes are prorated for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection (a) of this section. The numerator of the proration fraction is the number of full months remaining in the calendar year following the registration application date and the denominator of the fraction is 12.

(a2) Repealed by Session Laws 2009-445, s. 24(a), effective July 1, 2011, and applicable to combined tax and registration notices issued on or after that date, or when the Division of motor vehicles and the Department of Revenue certify that the integrated computer system or registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first.

(b) Distribution and Collection Fees. – The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division must send a copy of the combined tax and registration notice for a registered classified motor vehicle to the motor vehicle owner, as defined in G.S. 20-4.01. Upon receiving written consent from the motor vehicle owner, the notice required under this subsection may be sent electronically to an e-mail address provided by the motor vehicle owner. The Department must establish a fee equal to the actual cost of preparing, printing, and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and may receive a fee for collecting these taxes and fees. The amount of this fee for an agent contracting with the Division of Motor Vehicles must equal at least the applicable amount set under G.S. 20-63(h). The amount of this fee for the Division of Motor Vehicles is the amount set by the memorandum of understanding entered into under G.S. 105-330.11 but shall not exceed the amount set under G.S. 20-63. The Property Tax Division must establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted at least once each month.

(b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) Notice for Unregistered Vehicle. – The assessor must prepare and send a tax notice for each unregistered classified motor vehicle before September 1 following the January 31 listing date. The notice must include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor must use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities must list, assess, and tax unregistered classified motor vehicles as provided in G.S. 105-326, 105-327, and 105-328.

(d) Scope of Levy. – A county must include taxes on registered classified motor vehicles in the tax levy for the fiscal year in which the taxes are collected.

(e) Repealed by Session Laws 2012-79, s. 3.5, effective June 26, 2012. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 6; 1995, c. 24, s. 1; c. 329, s. 2; c. 510, s. 3; 2005-294, s. 6; 2005-313, s. 8; 2006-259, s. 31.5; 2007-471, ss. 4, 5; 2007-527, s. 22(b); 2008-134, s. 65; 2009-445, ss. 24(a), 25(a); 2010-95, s. 22(c), (d); 2011-330, s. 42(a); 2012-79, ss. 3.5, 3.6; 2013-372, s. 2(b); 2013-414, s. 70(b)-(d); 2014-3, s. 13.3; 2015-108, s. 1.)

§ 105-330.6. Motor vehicle tax year; transfer of plates; surrender of plates.

(a) Tax Year. – The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the staggered system begins on the first day of the first month following the date on which the former registration expires or the new registration is applied for and ends on the last day of the month in which the current registration expires. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the annual system begins on the first day of the first month following the date on which the registration expires or the new registration is applied for and ends the following December 31. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) is the fiscal year that opens in the calendar year in which the vehicle is required to be listed.

(a1) Change in Tax Year. – If the tax year for a classified motor vehicle changes because of a change in its registration for a reason other than the transfer of its registration plates to another classified motor vehicle pursuant to G.S. 20-64, and the new tax year begins before the expiration of the vehicle's original tax year, the taxpayer may receive a credit, in the form of a release, against the taxes on the vehicle for the new tax year. The amount of the credit is equal to a proportion of the taxes paid on the vehicle for the original tax year. The proportion is the number of full calendar months remaining in the original tax year as of the first day of the new tax year, divided by the number of months in the original tax year. To obtain the credit allowed in this subsection, the taxpayer must apply within 30 days after the taxes for the new tax year are due and must provide the county tax collector information establishing the original tax year of the vehicle, the amount of taxes paid on the vehicle for that year, and the reason for the change in registration.

(b) Transfer of Plates. – If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the registration plates from the listed vehicle to another classified motor vehicle pursuant to G.S. 20-64 during the listed vehicle's tax year, the

vehicle to which the plates are transferred is not required to be listed or taxed until the current registration expires or is renewed.

(c) Surrender of Plates. – If the owner of a classified motor vehicle, who pays the tax as required by G.S. 105-330.4(a), either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within one year after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is the number of months in the tax year and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 7; 1995, c. 510, s. 4; 1998-139, s. 3; 2001-406, s. 1; 2001-497, s. 1(a); 2005-313, s. 9; 2017-204, s. 5.2.)

§ 105-330.7: Repealed by Session Laws 2005-294, s. 7, effective July 1, 2013, and applicable to combined tax and registration notices issued on or after that date.

§ 105-330.8. Deadlines not extended.

Except as otherwise provided in this Article, the following sections of the General Statutes do not apply:

(1) G.S. 105-395.1 and G.S. 103-5.
(2) G.S. 105-321(f).
(3) G.S. 105-360. (1991, c. 624, s. 1; 2009-445, s. 24(a); 2010-95, s. 22(c); 2013-414, s. 70(b).)

§ 105-330.9. Antique automobiles.

(a) Definition. – For the purpose of this section, the term "antique automobile" means a motor vehicle that meets all of the following conditions:

(1) It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate under G.S. 20-79.4.
(2) It is maintained primarily for use in exhibitions, club activities, parades, and other public interest functions.
(3) It is used only occasionally for other purposes.
(4) It is owned by an individual, or owned directly or indirectly through one or more pass-through entities, by an individual.

(5) It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

(b) Classification. – Antique automobiles are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and must be assessed for taxation in accordance with this section. An antique automobile must be assessed at the lower of its true value or five hundred dollars ($500.00). (1995, c 512, s 2; 2009-445, s. 24(a); 2013-414, s. 70(b); 2017-10, s. 2.8.)

§ 105-330.10. Disposition of interest.

The interest collected on unpaid registration fees pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the North Carolina Highway Fund. (2005-294, ss. 8, 9; 2006-30, s. 3; 2006-259, s. 31.5; 2007-471, s. 7(a); 2007-527, s. 22(a)-(c); 2008-134, ss. 63, 65, 66, 79; 2009-445, s. 25(b); 2010-95, s. 22(a), (b), (e); 2011-330, s. 42(a)-(c); 2013-414, s. 70(a), (c), (d); 2015-241, s. 29.30(n).)

§ 105-330.11. Memorandum of understanding.

The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles are directed to enter into a memorandum of understanding concerning the administration of this Article. The memorandum of understanding must include the following:

(1) A procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles.

(2) Information concerning vehicle identification, the name and address of a vehicle's owner, and other information that will be required on a motor vehicle registration form to implement the tax listing and collection provisions of this Article.

(3) A procedure for the business practices, accounting, and costs of carrying out the integrated computer system for registration renewal and property tax collection for motor vehicles once the system has been certified to be in operation by the Department of Revenue and the Department of Transportation. The Departments must consult with the North Carolina Association of County Commissioners, acting on behalf of the counties, and the North Carolina League of Municipalities, acting on behalf of the municipalities, in developing the procedures under this subdivision and obtain their signed endorsements before any part of this procedure is implemented. (2008-134, s. 64; 2009-445, s. 24(a); 2013-414, s. 70(b).)

§§ 105-330.12 through 105-332: Reserved for future codification purposes.

Article 23.

Public Service Companies.

§ 105-333. Definitions.

The following definitions apply in this Article unless the context requires a different meaning:

(1) Airline company. – A company engaged in the business of transporting passengers and property by aircraft for hire within, into, or from this State.

(2) Bus line company. – A company engaged in the business of transporting passengers and property by motor vehicle for hire over the public highways of this State (but not including a bus line company operating primarily upon the public streets within a single local taxing unit), whether the transportation is within, into, or from this State.

(3) Distributable system property. – All real property and personal property owned or used by a railroad company other than nondistributable system property.

(4) Electric membership corporation. – A company organized, reorganized, or domesticated under Chapter 117 of the General Statutes and engaged in the business of supplying electricity for light, heat, or power to consumers in this State.

(5) Electric power company. – A company engaged in the business of supplying electricity for light, heat, or power to consumers in this State.

(6) Repealed by Session Laws 1973, c. 783, s. 5.

(7) Flight equipment. – Aircraft fully equipped for flying and used in any operation within this State.

(8) Gas company. – A company engaged in the business of supplying artificial or natural gas to, from, within, or through this State through pipe or tubing for light, heat, or power to consumers in this State.

(9) Locally assigned rolling stock. – Rolling stock that is owned or leased by a motor freight carrier company, specifically assigned to a terminal or other premises, and regularly used at the premises to which assigned.

(9a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Mobile telecommunications company. – A company providing a mobile telecommunications service as defined in G.S. 105-164.3.

(10) Motor freight carrier company. – A company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State as provided in this subdivision:

a. As to interstate carrier companies domiciled in North Carolina, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State or two or more terminals inside this State. For purposes of appraisal and allocation only, the term also includes a North Carolina interstate carrier that does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad valorem taxes on a portion of the value of the rolling stock of the carrier to taxing units in one or more other states.

b. As to interstate carrier companies domiciled outside this State, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.

c. As to intrastate carrier companies, this term includes only those carriers that are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State.

(11) Nondistributable system property. – The following properties owned by a railroad company: land other than right-of-way, depots, machine shops, warehouses, office buildings, other structures, and the contents of the structures listed in this subdivision.

(12) Nonsystem property. – The real and tangible personal property owned by a public service company but not used in its public service activities.

(13) Pipeline company. – A company engaged in the business of transporting natural gas, petroleum products, or other products through pipelines to, from, within, or through this State, or having control of pipelines for such a purpose.

(14) **(Effective for taxes imposed for taxable years beginning before July 1, 2015)** Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, providers of mobile telecommunications service as defined in G.S. 105-164.3, a cable television company, or a radio or television broadcasting company.

(14) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a bus line company, an airline company, a motor freight carrier company, a mobile telecommunications company, or a tower aggregator company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a cable television company, or a radio or television broadcasting company.

(15) Railroad company. – A company engaged in the business of operating a railroad to, from, within or through this State on rights-of-way owned or leased by the company. It also means a company operating a passenger service on the lines of any railroad located wholly or partly in this State.

(16) Rolling stock. – Motor vehicles, railroad locomotives, and railroad cars that are propelled by mechanical or electrical power and used upon the highways or, in the case of railroad vehicles, upon tracks.

(17) System property. – The real property and personal property used by a public service company in its public service activities. The term also includes public service company property under construction on the day as of which property

is assessed which when completed will be used by the owner in its public service activities.

(17a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Tangible personal property of a mobile telecommunications company. – All tangible personal property located in this State that is owned by a mobile telecommunications company or is leased to and capitalized on the books of a mobile telecommunications company in accordance with generally accepted accounting principles, including cellular towers, cellular equipment shelters, and site improvements at cellular tower locations. The term does not include FCC licenses or authorizations or other intangible personal property.

(17b) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Tangible personal property of a tower aggregator company. – All tangible personal property located in this State that is owned by a tower aggregator company or is leased to and capitalized on the books of a tower aggregator company in accordance with generally accepted accounting principles, including cellular towers, cellular equipment shelters, and site improvements at cellular tower locations.

(18) **(Repealed effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Telegraph company. – A company engaged in the business of transmitting telegraph messages to, from, within, or through the State.

(19) **(Effective for taxes imposed for taxable years beginning before July 1, 2015)** Telephone company. – A company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State.

(19) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Telephone company. – A company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State, except that the term does not include a mobile telecommunications company.

(20) Repealed by Session Laws 1973, c. 783, s. 5.

(21) Terminal. – A motor freight carrier facility that includes buildings for the handling and temporary storage of freight pending transfer between locations. The term also includes a facility that handles truckloads only and typically consists of a wide, open space where rolling stock is parked and a building for offices and maintenance of rolling stock.

(22) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2015)** Tower aggregator company. – A company that provides tower infrastructure for broadcasting and mobile telephony and that leases space on the tower infrastructure to mobile telecommunications companies. (1939, c. 310, ss. 1600-1605; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; c. 1121, s. 4; 1973, c. 198; c. 783, ss. 1-5; c. 1180; 1991 (Reg. Sess., 1992), c. 961, s. 1; 1995, c. 350, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 646, s. 18; 1997-23, ss. 6, 7; 1998-98, s. 25; 2010-95, ss. 19, 20; 2011-330, s. 41; 2014-3, s. 11.1(a).)

§ 105-334. Duty to file report; penalty for failure to file.

(a) Every public service company, whether incorporated under the laws of this State or any other state or any foreign nation, whose property is subject to taxation in this State, shall prepare and deliver to the Department of Revenue each year a report showing (as of January 1) such information with regard to the property it owns and the system property it leases as the Department of Revenue may by regulation prescribe. This report shall be filed on or before the last day of March, and the following affirmation, which shall be annexed to the report, shall be signed by a principal officer of the public service company making the report:

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this report, including any accompanying statements, inventories, schedules, and other information is true and complete.

(b) Any individual who willfully subscribes a report required by this section which he does not believe to be true and correct as to every material matter shall be guilty of a Class 2 misdemeanor.

(c) For good cause the Department may grant reasonable extensions of time for filing the required reports.

(d) The Department may require any additional reports or information it deems necessary to properly carry out its duties under this Article.

(e) The provisions of G.S. 105-291 and 105-312 are made specifically applicable to all proceedings taken under this Article. (1939, c. 310, ss. 1600-1606; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1993, c. 539, s. 721; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-335. (Effective for taxes imposed for taxable years beginning before July 1, 2015) Appraisal of property of public service companies.

(a) Duty to Appraise. – In accordance with the provisions of subsection (b), below, the Department of Revenue shall appraise for taxation the true value of each public service company (other than bus line, motor freight carrier, and airline companies) as a system (both inside and outside this State). Certain specified properties of bus line, motor freight carrier, and airline companies shall be appraised by the Department in accordance with the provisions of subsection (c), below, and all other properties of such companies shall be listed, appraised, and assessed in the manner prescribed by this Subchapter for the properties of taxpayers other than public service companies.

(b) Property of Public Service Companies Other Than Those Noted in Subsection (c). –

(1) System Property. – Each year, as of January 1, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) the system property used by each public service company both inside and outside this State. Property leased by a public service company shall be included in appraising the value of its system property if necessary to ascertain the true value of the company's system property.

(2) Nonsystem Personal Property. – Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) each public service

company's nonsystem tangible personal property subject to taxation in this State.

(3) Nonsystem Real Property. – In accordance with the county in which the public service company's nonsystem real property is located and the schedules set out in G.S. 105-286 and 105-287, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) each public service company's nonsystem real property subject to taxation in this State.

(c) Property of Bus Line, Motor Freight Carrier, and Airline Companies. –

(1) Bus Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the rolling stock owned or leased by or operated under the control of each bus line company, which bus line company is domiciled in this State or which is regularly engaged in business in this State.

(2) Motor Freight Carrier Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the rolling stock owned by a motor freight carrier company or leased by a motor freight carrier company and operated by its employees which motor freight carrier company is domiciled in this State or is regularly engaged in business in this State at a terminal owned or leased by the carrier.

(3) Flight Equipment. – Each year, as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the flight equipment owned or leased by or operated under the control of each airline company that is domiciled in the State or that is regularly engaged in business at some airport in this State. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 783, s. 6; c. 1180.)

§ 105-335. (Effective for taxes imposed for taxable years beginning on or after July 1, 2015) Appraisal of property of public service companies.

(a) Duty to Appraise. – The Department of Revenue shall appraise for taxation each public service company in accordance with subsection (b) of this section except for a public service company listed in this subsection. The Department shall appraise certain specified properties of the following public service companies in accordance with subsection (c) of this section, and all other properties of such companies shall be listed, appraised, and assessed in the manner prescribed by this Subchapter for the properties of taxpayers other than public service companies:

(1) Bus line.

(2) Motor freight carrier.

(3) Airline.

(4) Mobile telecommunications company.

(5) Tower aggregator company.

(b) Property of Public Service Companies Other Than Those Noted in Subsection (c). –

(1) System Property. – Each year, as of January 1, the Department of Revenue shall appraise at its true value the system property used by each public service company both inside and outside this State. Property leased by a public service

company shall be included in appraising the value of its system property if necessary to ascertain the true value of the company's system property.

(2) Nonsystem Personal Property. – Each year as of January 1, the Department shall appraise at its true value each public service company's nonsystem tangible personal property subject to taxation in this State.

(3) Nonsystem Real Property. – In accordance with the county in which the public service company's nonsystem real property is located and the schedules set out in G.S. 105-286 and 105-287, the Department of Revenue shall appraise at its true value each public service company's nonsystem real property subject to taxation in this State.

(c) Property of Bus Line, Motor Freight Carrier, Airline, Mobile Telecommunications, and Tower Aggregator Companies. –

(1) Bus Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value the rolling stock owned or leased by or operated under the control of each bus line that is domiciled in this State or that is regularly engaged in business in this State.

(2) Motor Freight Carrier Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value the rolling stock owned by a motor freight carrier company or leased by a motor freight carrier company and operated by its employees that is domiciled in this State or that is regularly engaged in business in this State at a terminal owned or leased by the carrier.

(3) Flight Equipment. – Each year, as of January 1, the Department shall appraise at its true value the flight equipment owned or leased by or operated under the control of each airline company that is domiciled in the State or that is regularly engaged in business at some airport in this State.

(4) Property of Mobile Telecommunications Company. – Each year, as of January 1, the Department shall appraise at its true value the tangible personal property of a mobile telecommunications company as provided in G.S. 105-336(c) and G.S. 105-336(d).

(5) Property of Tower Aggregator Company. – Each year, as of January 1, the Department shall appraise at its true value the tangible personal property of a tower aggregator company as provided in G.S. 105-336(d). (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 783, s. 6; c. 1180; 2014-3, s. 11.1(b).)

§ 105-336. (Effective for taxes imposed for taxable years beginning before July 1, 2015) Methods of appraising certain properties of public service companies.

(a) Appraising System Property of Public Service Companies Other Than Those Noted in Subsection (b). – In determining the true value of each public service company (other than one covered by subsection (b), below) as a system the Department of Revenue shall give consideration to the following:

(1) The market value of the company's capital stock and debt, taking into account the influence of any nonsystem property.

(2) The book value of the company's system property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory

agency and what it would cost to replace or reproduce the system property, less a reasonable allowance for depreciation.

(3) The gross receipts and operating income of the company.

(4) Any other factor or information that in the judgment of the Department has a bearing on the true value of the company's system property.

(b) Appraising Rolling Stock and Flight Equipment. – In determining the true value of the rolling stock of bus line and motor freight carrier companies and the flight equipment of airline companies, the Department of Revenue shall consider the book value of the property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the property in its existing condition. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-336. (Effective for taxes imposed for taxable years beginning on or after July 1, 2015) Methods of appraising certain properties of public service companies.

(a) Appraising System Property of Public Service Companies Other Than Those Noted in Subsections (b), (c), and (d) of This Section. – The Department of Revenue shall give consideration to the factors listed in this subsection in determining the true value of each public service company as a system, other than one covered by subsection (b), (c), or (d) of this subsection. The factors are:

(1) The market value of the company's capital stock and debt, taking into account the influence of any nonsystem property.

(2) The book value of the company's system property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the system property, less a reasonable allowance for depreciation.

(3) The gross receipts and operating income of the company.

(4) Any other factor or information that in the judgment of the Department has a bearing on the true value of the company's system property.

(b) Appraising Rolling Stock and Flight Equipment. – In determining the true value of the rolling stock of bus line and motor freight carrier companies and the flight equipment of airline companies, the Department of Revenue shall consider the book value of the property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the property in its existing condition.

(c) Appraising Tangible Personal Property of Mobile Telecommunications Companies. – In determining the true value of the tangible personal property of a mobile telecommunications company (excluding towers), the Department of Revenue shall consider the original cost of the property as reflected in the books of account maintained by the company in accordance with generally accepted accounting principles. The Department of Revenue may also consider what it would cost to replace or reproduce the property. In either case, an appropriate deduction shall be made for all forms of

depreciation, including physical deterioration, functional obsolescence, and external or economic obsolescence.

(d) Appraising Tangible Personal Property of Tower Aggregator Companies and Certain Property of Mobile Telecommunications Companies. – In determining the true value of the tangible personal property of a tower aggregator company (excluding towers), the Department of Revenue shall consider the original cost of the property as reflected in the books of account maintained by the company in accordance with generally accepted accounting principles and may also consider what it would cost to replace or reproduce the property. In determining the true value of a tower of a tower aggregator company or a mobile telecommunications company, the Department of Revenue shall consider what it would cost to replace or reproduce the tower, based on tower height and type, as determined by a nationally recognized cost service commonly utilized by appraisers. For all property, an appropriate deduction shall be made for all forms of depreciation, including physical deterioration, functional obsolescence, and external or economic obsolescence. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 2014-3, s. 11.1(c).)

§ 105-337. (Effective for taxes imposed for taxable years beginning before July 1, 2015) Apportionment of taxable values to this State.

With respect to any public service company operating both inside and outside this State, it shall be the duty of the Department of Revenue to apportion for taxation in this State a fair and reasonable share of the value of the company as a system or its rolling stock or flight equipment as appraised under the provisions of G.S. 105-336. Thus, when the Department has determined true value in accordance with the provisions of G.S. 105-336(a) or G.S. 105-336(b), it shall ascertain the portion of the total value subject to taxation in this State by applying property, business, and mileage factors thereto in accordance with the ratio that the company's property, business, or mileage in this State bears to its total property, business, or mileage. In its discretion, the Department may use one or more of the factors listed in the preceding sentence in order to achieve a fair and accurate result in the apportionment of the value of the property of any public service company. As used in this section,

(1) The term "business factor" means data that reflect the use of the company's property, such as gross revenue, net income, tons of freight carried, revenue ton miles, passenger miles, car miles, ground hours, and comparable data.

(2) The term "mileage factor" means factual information as to the linear miles of the company's track, wire, lines, pipes, routes, and similar operational routes and factual information as to the miles traveled by the company's rolling stock.

(3) The term "property factor" means investment in property; it may be either gross or net investment or any other reasonable figure reflecting the company's investment in property. (1939, c. 310, s. 1609; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-337. (Effective for taxes imposed for taxable years beginning on or after July 1, 2015) Apportionment of taxable values to this State.

With respect to any public service company operating both inside and outside this State, other than a mobile telecommunications company or a tower aggregator company, the Department of Revenue shall apportion for taxation in this State a fair and reasonable share of the value of the company as a system or its rolling stock or flight equipment as appraised under the provisions of G.S. 105-336. Thus, when the Department has determined true value in accordance with the provisions of G.S. 105-336(a) or G.S. 105-336(b), it shall ascertain the portion of the total value subject to taxation in this State by applying property, business, and mileage factors thereto in accordance with the ratio that the company's property, business, or mileage in this State bears to its total property, business, or mileage. In its discretion, the Department may use one or more of the factors listed in the preceding sentence in order to achieve a fair and accurate result in the apportionment of the value of the property of any public service company. The following definitions apply in this section:

(1) Business factor. – Data that reflect the use of the company's property, such as gross revenue, net income, tons of freight carried, revenue ton miles, passenger miles, car miles, ground hours, and comparable data.

(2) Mileage factor. – Factual information as to the linear miles of the company's track, wire, lines, pipes, routes, and similar operational routes and factual information as to the miles traveled by the company's rolling stock.

(3) Property factor. – Investment in property; it may be either gross or net investment or any other reasonable figure reflecting the company's investment in property. (1939, c. 310, s. 1609; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 2014-3, s. 11.1(d).)

§ 105-338. (Effective for taxes imposed for taxable years beginning before July 1, 2015) Allocation of appraised valuation of system property among local taxing units.

(a) State Board's Duty. – For purposes of taxation by local taxing units in this State, the Department of Revenue shall allocate the valuations of public service company property among the local taxing units in accordance with the provisions of this section.

(b) System Valuation of Companies Other Than Those Noted in Subsection (c). –

(1) System Property of Railroad Companies. – The appraised valuation of the distributable system property of a railroad shall be allocated for taxation to the local taxing units in accordance with the ratio of the miles of all the company's tracks in the local taxing unit to the total miles of all the company's tracks in this State, adjusted to reflect density of traffic in the local taxing unit.

(2) System Property of Telephone Companies. –

a. The Department of Revenue shall divide each telephone company's system property in this State into the following two classes and shall determine the original cost of that property and the percentage thereof represented by the property in each of the two classes.

- Class 1: Property located in this State that is identified under the applicable uniform system of accounts as central office equipment, large P.B.X. equipment, motor vehicles, tools and work equipment, office furniture and equipment, materials and supplies, and land and buildings (including towers and other structures).

- Class 2: Property located in this State that does not come within Class 1.

The Department of Revenue shall then apply the percentages obtained in accordance with this subdivision to the appraised valuation of the company's system property in this State and thereby derive the proportions of appraised valuation to be allocated as Class 1 and Class 2 valuations to local taxing units in accordance with subdivision (b)(2)b, below.

b. Having made the division required by subdivision (b)(2)a, above, the Department of Revenue shall allocate the appraised valuation of the properties in each class among the local taxing units of the State as follows:

- Class 1: The appraised valuations of property in this class shall be allocated among the local taxing units in which such property of the company is situated on January 1 in the proportion that the original cost of such property in the taxing unit bears to the original cost of all such property in this State.

- Class 2: The appraised valuations of property in this class shall be allocated among the local taxing units in which the company operates in the proportion that the miles of the company's single aerial wire and single wire in cable (including single tube in coaxial cable) in the taxing unit bears to the total of such wire miles of the company in this State.

(3) System Property of Other Companies Appraised by the Department of Revenue. –

a. The provisions of this subdivision (b)(3) shall govern the allocation of the property of all companies appraised by the Department of Revenue except railroad, telephone, bus line, motor freight carrier, and airline companies.

b. The appraised valuation of the system property of such a company shall be allocated for taxation to the local taxing units in which the company operates in the proportion that the original cost of the taxable system property in the local taxing unit on January 1 bears to the original cost of all the taxable system property in this State. If in any local taxing unit the company owns system property acquired prior to January 1, 1972, for which the original cost cannot be definitely ascertained, a reasonable estimate of the original cost of that property shall be made by the company, and this estimate shall be used by the Department of Revenue for allocation purposes as if it were the actual original cost of the property.

(c) Property of Bus Line, Motor Freight Carrier, and Airline Companies. –

(1) The appraised valuation of a bus line company's rolling stock shall be allocated for taxation to each local taxing unit according to the ratio of the company's scheduled miles during the calendar year preceding January 1 in each such unit to the company's total scheduled miles in this State for the same period. In no event, however, shall the State Board make an allocation to a taxing unit if,

when computed, the valuation for that taxing unit amounts to less than five hundred dollars ($500.00).

(2) The appraised valuation of the rolling stock (other than locally assigned rolling stock) owned or leased by a motor freight carrier company shall be allocated for taxation to each local taxing unit in which the company has a terminal according to the ratio of the tons of freight handled in the calendar year preceding January 1 at the company's terminals within the taxing unit to the total tons of freight handled by the company in this State in the same period. If a North Carolina interstate motor freight carrier company has no terminal outside this State, but has been required to pay ad valorem tax to one or more taxing units outside this State, there shall be allowed a reduction in the North Carolina valuation measured by the ratio of the rolling stock subject to ad valorem taxation outside the State to all of the carrier's rolling stock.

(3) The appraised valuation of an airline company's flight equipment shall be allocated for taxation to each local taxing unit in which an airport used by the company is situated according to the ratio obtained by averaging the following two ratios: the ratio of the company's ground hours in the taxing unit in the year preceding January 1 to the company's ground hours in the State in the same period, and the ratio of the company's gross revenue in the taxing unit in the year preceding January 1 to the company's gross revenue in the State in the same period. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 1180; 1997-456, s. 27.)

§ 105-338. (Effective for taxes imposed for taxable years beginning on or after July 1, 2015) Allocation of appraised valuation of public service property among local taxing units.

(a) State Board's Duty. – For purposes of taxation by local taxing units in this State, the Department of Revenue shall allocate the valuations of public service company property among the local taxing units in accordance with the provisions of this section. In no event, however, shall the State Board make an allocation to a taxing unit if, when computed, the valuation for that taxing unit amounts to less than five hundred dollars ($500.00).

(b) System Valuation of Companies Other Than Those Noted in Subsection (c). –

(1) System Property of Railroad Companies. – The appraised valuation of the distributable system property of a railroad shall be allocated for taxation to the local taxing units in accordance with the ratio of the miles of all the company's tracks in the local taxing unit to the total miles of all the company's tracks in this State, adjusted to reflect density of traffic in the local taxing unit.

(2) System Property of Telephone Companies. –

a. The Department of Revenue shall divide each telephone company's system property in this State into the following two classes and shall determine the original cost of that property and the percentage thereof represented by the property in each of the two classes.

- Class 1: Property located in this State that is identified under the applicable uniform system of accounts as central office equipment, large

P.B.X. equipment, motor vehicles, tools and work equipment, office furniture and equipment, materials and supplies, and land and buildings (including towers and other structures).

- Class 2: Property located in this State that does not come within Class 1.

The Department of Revenue shall then apply the percentages obtained in accordance with this subdivision to the appraised valuation of the company's system property in this State and thereby derive the proportions of appraised valuation to be allocated as Class 1 and Class 2 valuations to local taxing units in accordance with subdivision (b)(2)b, below.

b. Having made the division required by subdivision (b)(2)a, above, the Department of Revenue shall allocate the appraised valuation of the properties in each class among the local taxing units of the State as follows:

- Class 1: The appraised valuations of property in this class shall be allocated among the local taxing units in which such property of the company is situated on January 1 in the proportion that the original cost of such property in the taxing unit bears to the original cost of all such property in this State.

- Class 2: The appraised valuations of property in this class shall be allocated among the local taxing units in which the company operates in the proportion that the miles of the company's single aerial wire and single wire in cable (including single tube in coaxial cable) in the taxing unit bears to the total of such wire miles of the company in this State.

(3) System Property of Other Companies Appraised by the Department of Revenue. –

a. The provisions of this subdivision govern the allocation of the property of all companies appraised by the Department of Revenue except railroad, telephone, bus line, motor freight carrier, airline companies, mobile telecommunications companies, and tower aggregator companies.

b. The appraised valuation of the system property of such a company is allocated for taxation to the local taxing units in which the company operates in the proportion that the original cost of the taxable system property in the local taxing unit on January 1 bears to the original cost of all the taxable system property in this State. If in any local taxing unit the company owns system property acquired prior to January 1, 1972, for which the original cost cannot be definitely ascertained, the company shall make a reasonable estimate of the original cost of that property, and the Department shall use this estimate for allocation purposes as if it were the actual original cost of the property.

(c) Certain Property of Bus Line, Motor Freight Carrier, and Airline Companies. –

(1) The appraised valuation of a bus line company's rolling stock is allocated for taxation to each local taxing unit according to the ratio of the company's scheduled miles during the calendar year preceding January 1 in each unit to

the company's total scheduled miles in this State for the same period. (2) The appraised valuation of the rolling stock (other than locally assigned rolling stock) owned or leased by a motor freight carrier company is allocated for taxation to each local taxing unit in which the company has a terminal according to the ratio of the tons of freight handled in the calendar year preceding January 1 at the company's terminals within the taxing unit to the total tons of freight handled by the company in this State in the same period. If a North Carolina interstate motor freight carrier company has no terminal outside this State, but has been required to pay ad valorem tax to one or more taxing units outside this State, a reduction is allowed in the North Carolina valuation measured by the ratio of the rolling stock subject to ad valorem taxation outside the State to all of the carrier's rolling stock.

(3) The appraised valuation of an airline company's flight equipment is allocated for taxation to each local taxing unit in which an airport used by the company is situated according to the ratio obtained by averaging the following two ratios: the ratio of the company's ground hours in the taxing unit in the year preceding January 1 to the company's ground hours in the State in the same period, and the ratio of the company's gross revenue in the taxing unit in the year preceding January 1 to the company's gross revenue in the State in the same period.

(4) Repealed by Session Laws 2015-6, s. 2.17(a), effective for taxes imposed for taxable years beginning on or after July 1, 2015. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 1180; 1997-456, s. 27; 2014-3, s. 11.1(e); 2015-6, s. 2.17(a); 2017-204, s. 5.3.)

§ 105-339. (Effective for taxes imposed for taxable years beginning before July 1, 2015) Certification of appraised valuations of nonsystem property and locally assigned rolling stock.

Having determined the appraised valuations of the nonsystem properties of public service companies in accordance with subdivisions (b)(2) and (b)(3) of G.S. 105-335 and the appraised valuations of locally assigned rolling stock in accordance with subdivision (c)(1) of G.S. 105-335, the Department of Revenue shall assign those appraised valuations to the taxing units in which such properties are situated by certifying the valuations to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 18.)

§ 105-339. (Effective for taxes imposed for taxable years beginning on or after July 1, 2015) Certification of appraised valuations of nonsystem property and locally assigned rolling stock, tangible personal property of tower aggregator companies, and tangible personal property of mobile telecommunications companies.

Having determined the appraised valuations of the nonsystem properties of public service companies in accordance with subdivisions (b)(2) and (b)(3) of G.S. 105-335 and

the appraised valuations of locally assigned rolling stock in accordance with subdivision (c)(1) of G.S. 105-335, the appraised valuations of the tangible personal property of tower aggregator companies in accordance with G.S. 105-336(d) and the appraised valuations of the tangible personal property of mobile telecommunications companies in accordance with G.S. 105-336(c) and (d), the Department of Revenue shall assign those appraised valuations to the taxing units in which such properties are situated by certifying the valuations to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 18; 2014-3, s. 11.1(f); 2015-6, s. 2.17(b).)

§ 105-339.1: Repealed by Session Laws 2015-6, s. 2.17(c), effective April 9, 2015.

§ 105-340. Certification of appraised valuations of railroad companies.

(a) Having determined the appraised valuation of the "nondistributable" system property of a railroad company, the Department of Revenue shall assign the valuations for taxation to the local taxing units in which such property is situated in the same manner as is provided for nonsystem property in G.S. 105-339.

(b) Having determined the appraised valuation of the "distributable" system property of a railroad company and having allocated the valuations in accordance with G.S. 105-338(b)(1), the Department of Revenue shall then certify the amounts of those allocations to the local taxing units to which such amounts are due in accordance with the provisions of G.S. 105-341.

(c) Each local taxing unit receiving certified valuations in accordance with this section shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1620; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 19.)

§ 105-341. Certification of public service company system appraised valuations.

Having determined the appraised valuations of public service company system property in accordance with subdivision (b)(1) of G.S. 105-335 and having allocated the valuations in accordance with G.S. 105-338(b)(2) and (3), the Department of Revenue shall assign each local taxing unit's appraised valuations by certifying them to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 20.)

§ 105-342. Notice, hearing, and appeal.

(a) Right to Information. – Upon written request to the Department of Revenue, any public service company whose property values are subject to appraisal, apportionment, and allocation for purposes of taxation under this Article shall be entitled to be informed of the

elements that the Department considered in the appraisal of the company's property, the result in dollars produced by each element (including the methods and mathematical calculations used in determining those results), the specific factors and ratios the Department used in apportioning the appraised valuation of the company's property to this State, and the factors and the specific mathematical calculations the Department used in allocating the company's valuation among the local taxing units of this State. Upon written request to the Department of Revenue, any local taxing unit in this State shall be entitled to the same information with regard to any public service company whose property values are subject to appraisal, apportionment, and allocation for purposes of taxation under this Article.

(b) Appraisal and Apportionment Review. – The appraised valuation of public service company's property and the share thereof apportioned for taxation in this State under G.S. 105-335, 105-336, and 105-337 shall be deemed tentative figures until the provisions of this subsection (b) have been complied with. As soon as practicable after the tentative figures referred to in the preceding sentence have been determined, the Department of Revenue shall give the taxpayer written notice of the proposed figures and shall state in the notice that the taxpayer shall have 20 days after the date on which the notice was mailed in which to submit a written request to the Property Tax Commission for a hearing on the tentative appraisal or apportionment or both. If a timely request for a hearing is not made, the tentative figures shall become final and conclusive at the close of the twentieth day after the notice was mailed. If a timely request is made, the Property Tax Commission shall fix a date and place for the requested hearing and give the taxpayer at least 20 days' written notice thereof. The hearing shall be conducted under the provisions of subsection (d), below.

(c) Repealed by Session Laws 1985, c. 601, s. 4.

(d) Hearing and Appeal. – At any hearing under this section, the Property Tax Commission shall hear all evidence and affidavits offered by the taxpayer and may exercise the authority granted by G.S. 105-290(d) to obtain information pertinent to decision of the issue. The Commission shall make findings of fact and conclusions of law and issue an order embodying its decision. As soon as practicable thereafter, the Commission shall serve a written copy of its decision upon the taxpayer by personal service or by registered or certified mail, return receipt requested. (1971, c. 806, s. 1; 1973, c. 476, s. 193; 1979, c. 584, s. 2; c. 665, s. 1; 1985, c. 601, s. 4; 1987 (Reg. Sess., 1988), c. 1052, s. 1.)

§ 105-343. Penalty for failure to make required reports.

Any public service company which fails or refuses to prepare and deliver to the Department of Revenue any report required by this Article shall forfeit and pay to the State of North Carolina one hundred dollars ($100.00) for each day the report is delayed beyond the date on which it is required to be submitted. This penalty may be recovered in an action in the appropriate division of the General Court of Justice of Wake County in the name of the State on the relation of the Secretary of Revenue. When collected, the penalty shall be paid into the general fund of the State. The Secretary shall have the power to reduce or

waive the penalty provided in this section for good cause. (1939, c. 310, s. 1606; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-344. Failure to pay tax; remedies; penalty.

If any public service company fails or refuses to pay any taxes imposed on its property by any taxing unit of this State, the taxing unit may bring an action in the appropriate division of the General Court of Justice of the county in which the taxing unit is located for the recovery of the tax. Not less than 15 days before such an action is instituted, the taxing unit shall notify the taxpayer by registered or certified mail of its intention to bring the action. The judgment rendered in such an action shall include the tax imposed and unpaid and, as an additional tax, a penalty of fifty percent (50%) of the amount of the tax with interest on the sum of these taxes at the rate of nine percent (9%) per annum from the date the tax was due to be paid, plus reasonable attorneys' fees for the prosecution of the action to be fixed by the court. (The awarding of attorneys' fees by the court shall not prevent the taxing unit from paying its attorney an additional fee pursuant to contract, nor shall it prevent the taxing unit from requiring that the attorneys' fees awarded by the court be paid into the general fund of the taxing unit in accordance with any arrangement between the taxing unit and its attorneys.) The judgment rendered by the court may include a mandamus ordering the payment of the judgment, penalty, interest, and costs including the attorneys' fees as part of the costs.

If, during the pendency of an action brought under this section, additional or subsequent taxes shall accrue, those taxes, together with penalties and interest, may be included in the judgment if, prior to rendition of the judgment, the tax collector of the taxing unit files with the court a certificate of the additional taxes, penalties, and interest.

In any action brought under this section, the appraised valuation of the taxpayer's property as determined, allocated, and certified to the taxing unit by the Department of Revenue shall be conclusive and shall not be subject to collateral attack. (1939, c. 310, s. 1611; 1971, c. 806, s. 1; c. 931, s. 1; 1973, c. 476, s. 193.)

Article 24.

Review and Enforcement of Orders.

§ 105-345. Right of appeal; filing of exceptions.

(a) No party to a proceeding before the Property Tax Commission may appeal from any final order or decision of the Commission unless within 30 days after the entry of such final order or decision the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

(b) Any party may appeal from all or any portion of any final order or decision of the Commission in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party,

other than the Commission, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

(c) The Commission may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commission.

(d) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(e) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals. (1979, c. 584, s. 3; 1983, c. 565.)

§ 105-345.1. No evidence admitted on appeal; remission for further evidence.

No evidence shall be received at the hearing on appeal to the Court of Appeals but if any party shall satisfy the court that evidence has been discovered since the hearing before the Property Tax Commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the Commission with directions to take such subsequently discovered evidence, and after consideration thereof, to make such order as the Commission may deem proper, from which order an appeal shall lie as in the case of any other final order from which an appeal may be taken as provided in G.S. 105-345. (1979, c. 584, s. 3.)

§ 105-345.2. Record on appeal; extent of review.

(a) On appeal the court shall review the record and the exceptions and assignments of error in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Property Tax Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional provisions; or
(2) In excess of statutory authority or jurisdiction of the Commission; or
(3) Made upon unlawful proceedings; or
(4) Affected by other errors of law; or
(5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
(6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commission. (1979, c. 584, s. 3.)

§ 105-345.3. Relief pending review on appeal.

Pending judicial review, the Property Tax Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, a judge of the Court of Appeals is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1979, c. 584, s. 3.)

§ 105-345.4. Appeal to Supreme Court.

In all appeals heard in the Court of Appeals, any party may file a motion for review in the Supreme Court of the decision of the Court of Appeals under G.S. 7A-31, and in cases entitled to be appealed as a matter of right under G.S. 7A-30(3) any party may appeal to the Supreme Court from the decision of the Court of Appeals under the same rules and regulations as are prescribed by law for appeals, and such court may advance the cause on its docket. (1979, c. 584, s. 3.)

§ 105-345.5. Judgment on appeal enforced by mandamus.

In all cases in which, upon appeal, an order or decision of the Property Tax Commission is affirmed, in whole or in part, the appellate court may include in its decree a mandamus to the appropriate party to put said order in force, or so much thereof as shall be affirmed, or the appellate court may make such other order as it deems appropriate. (1979, c. 584, s. 3.)

§ 105-346. Peremptory mandamus to enforce order when no appeal.

(a) If no appeal is taken from an order or decision of the Property Tax Commission within the time prescribed by law and the person to which the order or decision is directed fails to put the same in operation, as therein required, the Commission may apply to the judge regularly assigned to the superior court district which includes Wake County, or to the resident judge of said district at chambers upon 10 days' notice, for a peremptory mandamus upon said person for the putting in force of said order or decision; and if said judge shall find that the order of said Commission was valid and within the scope of its powers, he shall issue such peremptory mandamus.

(b) An appeal shall lie to the Court of Appeals in behalf of the Commission, or the defendant, from the refusal or the granting of such peremptory mandamus. The remedy prescribed in this section for enforcement of orders of the Commission is in addition to other remedies prescribed by law. (1979, c. 584, s. 3.)

Article 25.

Levy of Taxes and Presumption of Notice.

§ 105-347. Levy of property taxes.

Each year – not later than the date prescribed by applicable law or, in the absence of specific statutory provisions, not later than the first day of August – the tax levying authorities of counties and municipalities shall levy on property rates of taxes, not exceeding any constitutional or statutory limits, necessary to meet the general and other legally authorized expenses of the taxing units. (1939, c. 310, s. 1400; 1971, c. 806, s. 1.)

§ 105-348. All interested persons charged with notice of taxes.

All persons who have or who may acquire any interest in any real or personal property that may be or may become subject to a lien for taxes are hereby charged with notice that such property is or should be listed for taxation, that taxes are or may become a lien thereon, and that if taxes are not paid the proceedings allowed by law may be taken against such property. This notice shall be conclusively presumed, whether or not such persons have actual notice. (1939, c. 310, s. 1705; 1971, c. 806, s. 1.)

Article 26.

Collection and Foreclosure of Taxes.

§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies.

(a) Appointment and Term. – The governing body of each county and municipality shall appoint a tax collector on or before July 1, 1971, to serve for a term to be determined by the appointing body and until his successor has been appointed and qualified. Until the first such appointments are made, county and municipal taxes shall be collected by the tax collectors presently serving under prior provisions of law. The governing body may remove the tax collector from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the governing body. No hearing shall be required, however, if the tax collector is removed for failing to meet the prerequisites prescribed by G.S. 105-352(b) for delivery of the tax receipts. Unless otherwise provided by G.S. 105-373, whenever any vacancy occurs in this office, the governing body shall appoint a qualified person to serve as tax collector for the period of the unexpired term.

(b) Qualifications. – The governing body shall appoint as tax collector a person of character and integrity whose experience in business and collection work is satisfactory to the governing body.

(c) Bond. – No tax collector shall be allowed to begin his duties until he shall have furnished bond conditioned upon his honesty and faithful performance in such amount as the governing body may prescribe. A tax collector shall not be permitted to collect any taxes not covered by his bond, nor shall a tax collector be permitted to continue collecting taxes after his bond has expired without renewal.

(d) Compensation. – The compensation and expense allowances of the tax collector shall be fixed by the governing body.

(e) Alternative to Separate Office of Tax Collector. – Pursuant to Article VI, Sec. 9, of the North Carolina Constitution, the office of tax collector is hereby declared to be an office that may be held concurrently with any appointive or elective office other than those hereinafter designated, and the governing body may appoint as tax collector any appointive or elective officer who meets the personal and bonding requirements established by this section. A member of the governing body of a taxing unit may not be appointed tax collector, nor may the duties of the office be conferred upon him. A person appointed or elected as the treasurer or chief accounting officer of a taxing unit may not be appointed tax collector, nor may the duties of the office of tax collector be conferred upon him except with the written permission of the secretary of the Local Government Commission who, before giving his permission, shall satisfy himself that the unit's internal control procedures are sufficient to prevent improper handling of public funds.

(f) Deputy Tax Collectors. – The governing body of a county or municipality is authorized to appoint one or more deputy tax collectors and to establish their terms of office, compensation, and bonding requirements. A deputy tax collector shall have authority to perform, under the direction of the tax collector, any act that the tax collector may perform unless the governing body appointing the deputy specifically limits the scope of the deputy's authority.

(g) Oath. – Every tax collector and deputy tax collector, as the holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as tax collector to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the governing body of the taxing unit. (1939, c. 310, ss. 1701, 1702; 1957, c. 537; 1971, c. 806, s. 1; 1991, c. 110, s. 6; 1991 (Reg. Sess., 1992), c. 1007, s. 23.)

§ 105-350. General duties of tax collectors.

It shall be the duty of each tax collector:

(1) To employ all lawful means to collect all property, dog, license, privilege, and franchise taxes with which he is charged by the governing body.

(2) To give such bond as may be required of him by the governing body under the provisions of G.S. 105-349.

(3) To perform such duties in connection with the preparation of the tax records and tax receipts as the governing body may direct under the provisions of G.S. 105-319 and 105-320.

(4) To keep adequate records of all collections he makes.

(5) To account for all moneys coming into his hands in such form and detail as may be required by the chief accounting officer of the taxing unit.

(6) To make settlement at the times required by G.S. 105-373 and at any other time the governing body may require him to do so.

(7) To submit to the governing body at each of its regular meetings a report of the amount he has collected on each year's taxes with which he is charged, the amount remaining uncollected, and the steps he is taking to encourage or enforce payment of uncollected taxes.

(8) To send bills or notices of taxes due to taxpayers if instructed to do so by the governing body.

(9) To visit delinquent taxpayers to encourage payment of taxes if instructed to do so by the governing body. (1939, c. 310, s. 1703; 1971, c. 806, s. 1.)

§ 105-351. Authority of successor collector.

The successor in office of any tax collector may continue and complete any legally authorized process or proceeding begun by his predecessor for the collection of taxes. (1939, c. 310, s. 1703; 1971, c. 806, s. 1.)

§ 105-352. Delivery of tax receipts to tax collector; prerequisites; procedure upon default.

(a) Time of Delivery. – As provided in G.S. 105-321, upon order of the governing body, the tax receipts shall be delivered to the tax collector on or before the first day of September.

(b) Settlement, Bond, and Prepayments. – Before the tax receipts for the current year are delivered to the tax collector, he shall have:

(1) Delivered to the chief accounting officer of the taxing unit the duplicate receipts issued for prepayments received by the tax collector.
(2) Demonstrated to the satisfaction of the chief accounting officer that all moneys received by the tax collector as prepayments have been deposited to the credit of the taxing unit.
(3) Made his annual settlement (as defined in G.S. 105-373) for all taxes in his hands for collection.
(4) Provided bond or bonds as required by G.S. 105-349(c) for taxes for the current year and all prior years in his hands for collection. (In no event shall the governing body accept a bond of lesser amount than that prescribed by any local act applying to the taxing unit.)

In the event prepayments have been received by a person other than the regular tax collector, that person shall, before the tax receipts are delivered to the tax collector, deliver the prepayment receipt duplicates to the chief accounting officer and demonstrate to the satisfaction of that officer that all moneys received by him as prepayments have been deposited to the credit of the taxing unit. If the chief accounting officer has accepted prepayments, he shall not later than the day on which the tax receipts are delivered to the tax collector, make settlement with the governing body in such manner and form as the governing body may prescribe.

(c) Procedure upon Default. – If, when the tax receipts for the current year have been computed and prepared, the regular tax collector shall not have met the requirements of subsection (b), above, the governing body shall immediately appoint a special tax collector and, after he has given satisfactory bond for the full amount of the taxes as required by G.S. 105-349(c), deliver to him the tax receipts for the current year and order him to make collections as provided in G.S. 105-321. In the discretion of the governing body, the cost of the special tax collector's bond and compensation may be deducted from the compensation of the regular tax collector. If the regular tax collector shall thereafter meet the requirements of subsection (b), above, the special collector shall make full settlement (in the manner provided in G.S. 105-373 for tax collectors retiring from office), and the governing body, as provided in G.S. 105-321, shall deliver the tax receipts for the current year to the regular tax collector and order their collection.

(d) Civil and Criminal Penalties. –
(1) Any member of the governing body who shall vote to deliver the tax receipts to a tax collector before the tax collector has met the requirements prescribed by this section shall be individually liable for the amount of taxes charged against the tax collector for which he has not made satisfactory settlement; and any member of the governing body who so votes, or who willfully fails to perform any duty imposed by this section, shall be guilty of a Class 1 misdemeanor.
(2) Any tax collector or other official who fails to account for prepayments as prescribed by this section shall be guilty of a Class 1 misdemeanor. (1939, c. 310, s. 1707; 1971, c. 806, s. 1; 1993, c. 539, s. 722; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-353. Place for collection of taxes.

Taxes shall be payable at the office of the tax collector or at a financial institution with which the taxing unit has contracted for receipt of payment of taxes. For the convenience of taxpayers, the governing body may require the tax collector to be present to collect taxes in person or by deputy at other designated places within the taxing unit at times prescribed by the governing body.

If the governing body exercises this authority, the tax collector shall give timely notice of the places and times at which he will be present for collection; this notice shall be published in a newspaper having general circulation in the taxing unit and posted at three or more public places within the taxing unit. (1939, c. 310, s. 1712; 1971, c. 806, s. 1; 1989, c. 578, s. 2.)

§ 105-354. Collections for districts and other units of local government.

Whenever a taxing unit collects taxes for some district or other unit of local government, those taxes, for collection and foreclosure purposes, shall be treated as taxes of the taxing unit making the collection. (1971, c. 806, s. 1.)

§ 105-355. Creation of tax lien; date as of which lien attaches.

(a) Lien on Real Property. – Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Personal Property. – Taxes levied on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached. (1939, c. 310, s. 1704; 1971, c. 806, s. 1; 1973, c. 564, s. 4.)

§ 105-356. Priority of tax liens.

(a) On Real Property. – The lien of taxes imposed on real and personal property shall attach to real property at the time prescribed in G.S. 105-355(a). The priority of that lien shall be determined in accordance with the following rules:

(1) Subject to the provisions of the Revenue Act prescribing the priority of the lien for State taxes, the lien of taxes imposed under the provisions of this Subchapter shall be superior to all other liens, assessments, charges, rights, and claims of any and every kind in and to the real property to which the lien for taxes attaches regardless of the claimant and regardless of whether acquired prior or subsequent to the attachment of the lien for taxes.

(2) The liens of taxes of all taxing units shall be of equal dignity.

(3) The priority of the lien for taxes shall not be affected by transfer of title to the real property after the lien has attached, nor shall it be affected by the death, receivership, or bankruptcy of the owner of the real property to which the lien attaches.

(b) On Personal Property. – The lien of taxes on real and personal property shall attach to personal property at the time prescribed in G.S. 105-355(b). The priority of that lien shall be determined in accordance with the following rules:

(1) The tax lien, when it attaches to personal property, shall, insofar as it represents taxes imposed upon the property to which the lien attaches, be superior to all other liens and rights whether such other liens and rights are prior or subsequent to the tax lien in point of time.

(2) The tax lien, when it attaches to personal property, shall, insofar as it represents taxes imposed upon property other than that to which the lien attaches, be inferior to prior valid liens and perfected security interests and superior to all subsequent liens and security interests.

(3) As between the tax liens of different taxing units, the tax lien first attaching shall be superior. (1939, c. 310, s. 1704; 1971, c. 806, s. 1.)

§ 105-357. Payment of taxes.

(a) Medium of Payment. – Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, bonds or notes of the taxing unit, and payments in kind shall not be accepted in payment of taxes. A taxing unit may not permit the payment of taxes by offset of any bill, claim, judgment, or other obligation owed to the taxpayer by the taxing unit. The prohibition against payment of taxes by offset does not apply to offset of an obligation arising from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the unpaid taxes were levied.

(b) Acceptance of Checks and Electronic Payment. – The tax collector may accept checks and electronic payments, as defined in G.S. 147-86.20, in payment of taxes, as authorized by G.S. 159-32.1. Acceptance of a check or electronic payment is at the tax collector's own risk. A tax collector who accepts electronic payment of taxes may add a fee to each electronic payment transaction to offset the service charge the taxing unit pays for electronic payment service. A tax collector who accepts electronic payment or check in payment of taxes may issue the tax receipt immediately or withhold the receipt until the check has been collected or the electronic payment invoice has been honored by the issuer.

If a tax collector accepts a check or an electronic payment and issues a tax receipt and the check is returned unpaid (without negligence on the part of the tax collector in presenting the check for payment) or the electronic payment invoice is not honored by the issuer, the taxes for which the check or electronic payment was given shall be deemed unpaid; the tax collector shall immediately correct the copy of the tax receipt and other appropriate records to show the fact of nonpayment, and shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the check or electronic payment.

A financial institution with which a taxing unit has contracted for receipt of payment of taxes may accept a check in payment of taxes. If the check is honored, the financial institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue a receipt for payment of the taxes. If the check is returned unpaid, the financial institution shall so notify the tax collector, who shall proceed to collect the taxes by use of any remedy allowed for collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. – If the tax collector accepts a check or electronic payment in payment of taxes on real property and issues the receipt, and the check is later returned unpaid or the electronic payment invoice is not honored by the issuer, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if the purchasers or lienholders acquire their rights in good faith and without actual knowledge that the check has not been collected or the electronic payment invoice has not been honored, after examination of the copy of the tax receipt in the tax collector's office during the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified the taxpayer to return the receipt.

(2) Penalty. – In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law, the penalty for presenting in payment of taxes a check or electronic funds transfer that is returned or not completed because of insufficient funds or nonexistence of an account of the drawer or transferor is twenty-five dollars ($25.00) or ten percent (10%) of the amount of the check or electronic invoice, whichever is greater, subject to a maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check or electronic funds transfer was presented for payment, the drawer of the check or transferor of funds had sufficient funds in an account at a financial institution in this State to make the payment and, by inadvertence, the drawer of the check or transferor of the funds failed to draw the check or initiate a transfer on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check or electronic payment was given.

(c) Small Underpayments and Overpayments. – The governing body of a taxing unit may, by resolution, permit its tax collector to treat small underpayments of taxes as fully paid and to not refund small overpayments of taxes unless the taxpayer requests a refund before the end of the fiscal year in which the small overpayment is made. A "small underpayment" is a payment made, other than in person, that is no more than one dollar ($1.00) less than the taxes due on a tax receipt. A "small overpayment" is a payment made, other than in person, that is no more than one dollar ($1.00) greater than the taxes due on a tax receipt.

The tax collector shall keep records of all underpayments and overpayments of taxes by receipt number and amount and shall report these payments to the governing body as part of his settlement.

A resolution authorizing adjustments of underpayments and overpayments as provided in this subsection shall:

(1) Be adopted on or before June 15 of the year to which it is to apply;

(2) Apply to taxes levied for all previous fiscal years; and

(3) Continue in effect until repealed or amended by resolution of the taxing unit. (1939, c. 310, s. 1710; 1971, c. 806, s. 1; 1987, c. 661; 1989, c. 578, s. 3; 1989 (Reg. Sess., 1990), c. 1005, s. 8; 1991, c. 584, s. 2; 1999-434, s. 6; 2001-487, s. 25; 2002-156, s. 1; 2005-134, s. 1; 2005-313, s. 10.)

§ 105-358. Waiver of penalties; partial payments.

(a) Waiver. – A tax collector may, upon making a record of the reasons therefor, reduce or waive the penalty imposed on giving a worthless check under G.S. 105-357(b)(2).

(b) Partial Payments. – Unless otherwise directed by the governing body, the tax collector shall accept partial payments on taxes and issue partial payment receipts therefor.

When a payment is made on the tax for any year or on any installment, it shall first be applied to accrued penalties, interest, and costs and then to the principal amount of the tax or installment. In its discretion, the governing body may prescribe by uniform regulation the minimum amount or percentage of tax liability that may be accepted as a partial payment. (1939, c. 310, ss. 1708, 1709; 1971, c. 806, s. 1; 2002-156, s. 1.2; 2003-416, s. 10.)

§ 105-359. Prepayments.

(a) To Whom Made. – Payments of taxes made before the tax receipts have been delivered to the tax collector, herein referred to as prepayments, shall be made to the regular tax collector unless the governing body shall have designated some other person to receive them. The regular tax collector or person named to receive prepayments shall give bond satisfactory to the governing body.

(b) When Accepted. – No taxing unit shall be required to accept any tender of prepayment until the annual budget estimate has been filed as required by law.

(c) Estimation of Liability; Overpayment and Underpayment. – If the tax rate has not been finally fixed or if the assessed valuation of the taxpayer's property has not been finally determined at the time a prepayment is tendered, the tax collector shall compute the amount of the tax liability on the basis of the best information available to him. If it is later ascertained that there has been an overpayment, the excess (without interest) shall be refunded by the taxing unit. If it is later ascertained that there was an underpayment, the unpaid balance of the tax shall be due, and the balance due shall be allowed the discount or charged the interest in effect with respect to taxes for the same year at the time the balance is paid.

(d) Receipts. – A receipt issued for a prepayment made on the basis of an estimate of the tax rate or assessed valuation shall so state, and such a receipt shall not release property from the tax lien created by G.S. 105-355(a). An official and final receipt shall be made available to the taxpayer as soon as possible after determination that the tax has been fully paid.

(e) Duties of Chief Accounting Officer. – It shall be the duty of the chief accounting officer of the taxing unit to:

(1) Secure and retain in his office, available to taxpayers upon request, the official receipts for taxes paid in full by prepayment.
(2) Credit on the tax receipts to be delivered to the tax collector all taxes that have been paid in full or in part by prepayment.
(3) Prepare and deliver refunds for overpayments made by way of prepayment.
(4) Reduce the charge to be made against the tax collector by deducting from the total amount of taxes levied so much of the amount received as prepayments as is not required to be refunded under the provisions of subsection (c), above.

Any chief accounting officer who fails to perform the duties imposed upon him by this subsection (e) shall be guilty of a Class 1 misdemeanor. (1939, c. 310, ss. 1706, 1707; 1969, c. 921, s. 2; 1971, c. 806, s. 1; 1993, c. 539, s. 723; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment; interest on overpayment of tax.

(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or

face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

(1) For the period January 6 to February 1, interest accrues at the rate of two percent (2%).

(2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof.

(b) Repealed by Session Laws 1987, c. 93, s. 2.

(c) Under the conditions established by this subsection (c), the governing body of any county or municipality levying taxes under the provisions of this Subchapter shall have authority to establish a schedule of discounts to be applied to taxes paid prior to the due date prescribed in subsection (a) above. To exercise this authority, the governing body shall:

(1) Not later than the first day of May preceding the due date of the taxes to which it first applies, adopt a resolution or ordinance specifying the amounts of the discounts and the periods of time during which they are to be applicable.

(2) Submit the resolution or ordinance to the Department of Revenue for approval.

(3) Upon approval by the Department of Revenue, publish the discount schedule at least once in some newspaper having general circulation in the taxing unit.

When such a resolution or ordinance is submitted to the Department of Revenue, the Department may approve it or disapprove it in whole or in part if, in the opinion of the Department, the discounts or the periods of time for which discounts are allowed are excessive or unreasonable. Such a resolution or ordinance, once adopted and approved by the Department of Revenue, shall continue in effect until repealed. Nothing in this subsection (c) shall prevent the governing body of any taxing unit from providing by resolution that the schedule of discounts for prepayment of taxes in effect in the taxing unit on June 30, 1971, shall continue in effect through November 1, 1971, but no longer.

(d) For the purposes of computing discounts and interest, tax payments submitted by mail shall be 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 shall be deemed to be received when the payment is received in the office of the tax collector. In any dispute arising under this subsection, the burden of proof shall be on the taxpayer to show that the payment was timely made.

(e) When an order of the county board of equalization and review reduces the valuation of property or removes the property from the tax lists and, based on the order, the taxpayer has paid more tax than is due on the property, the taxpayer is entitled to receive interest on the overpayment in accordance with this subdivision. An overpayment of tax bears interest at the rate set under subsection (a) of this section from the date the interest begins to accrue until a refund is paid. Interest accrues from the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed. (1939, c. 310, s. 1403; 1943,

c. 667; 1945, c. 247, s. 3; c. 1041; 1947, c. 888, s. 1; 1969, c. 921, s. 1; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 327, s. 2; c. 630; 1979, c. 233, ss. 1, 2; 1987, c. 93, ss. 1, 2; 2008-35, s. 2.7; 2011-3, s. 3(a).)

§ 105-361. Statement of amount of taxes due.

(a) Duty to Furnish a Certificate. – On the request of a person who is listed in subdivision (1) of this subsection and who complies with subdivision (2) of this subsection, the tax collector must give the person a written certificate stating the amount of any taxes and special assessments owed for the current year and for any prior year and the amount of any deferred taxes and interest that would become due if a disqualifying event occurred.

(1) Who may make request. – Any of the following persons may request the certificate:

a. An owner of the real property.

b. An occupant of the real property.

c. A person having a lien on the real property.

d. A person having a legal interest or estate in the real property.

e. A person or firm having a contract to purchase or lease the property or a person or firm having contracted to make a loan secured by the real property.

f. The authorized agent or attorney of any person described in this subdivision.

(2) Identification of property. – A person requesting a certificate with respect to taxes must specify the name of the person who listed the real property for taxation for each year for which the information is sought. A person requesting a certificate with respect to assessments must identify the real estate in the manner required by the tax collector.

(b) Reliance on the Certificate. – When a certificate has been issued as provided in subsection (a), above, all taxes and special assessments that have accrued against the property for the period covered by the certificate shall cease to be a lien against the property, except to the extent of taxes and special assessments stated to be due in the certificate, as to all persons, firms, and corporations obtaining such a certificate and their successors in interest who rely on the certificate:

(1) By paying the amount of taxes and assessments stated therein to be a lien on the real property;

(2) By purchasing or leasing the real property; or

(3) By lending money secured by the real property.

The tax collector shall be liable on his bond for any loss to the taxing unit arising from an understatement of the tax and special assessment obligations in the preparation of a certificate furnished under this section.

(c) Penalty. – Any tax collector who fails or refuses to furnish a certificate when requested under the conditions prescribed in this section shall be liable for a penalty of fifty dollars ($50.00) recoverable in a civil action by the person who made the request.

(d) Oral Statements. – An oral statement made by the tax collector as to the amount of taxes, special assessments, penalties, interest, and costs due on any real or personal property shall bind neither the tax collector nor the taxing unit.

(e) Internet. – If the taxing unit maintains an Internet web site on which current information on the amount of taxes, special assessments, penalties, interest, and costs due on any real or personal property is available, the governing body of the taxing unit may adopt an ordinance to allow a person to rely on information obtained from the web site as if it were a certificate issued pursuant to subsection (a) of this section. The ordinance may provide for disclaimers to be posted on the web site containing language notifying the person relying on the information contained in the web site about matters relevant to the information, such as the date on which the information was posted, the date as of which the information is current, and any special instructions and procedures for accessing the complete and accurate information. The ordinance may also provide for appropriate procedural provisions by which the tax collector may ensure full and accurate payment of all taxes, assessments, and obligations certified under this subsection.

A person who relies on the web site information must keep and present a copy of the information as necessary or appropriate, as if the copy were a certificate issued under subsection (a) of this section. The tax collector shall be liable on the tax collector's bond for any loss to the taxing unit arising from an understatement of the tax and special assessment obligations contained in the information available on the web site unless the taxing unit's ordinance provides the disclaimers authorized by this subsection. (1939, c. 310, s. 1711; 1971, c. 806, s. 1; 1973, c. 604; c. 1340; 2003-399, s. 1; 2009-445, s. 26.)

§ 105-362. Discharge of lien on real property.

(a) General Rule. – The tax lien on real property shall continue until the principal amount of the taxes plus penalties, interest, and costs allowed by law have been fully paid.

(b) Release of Separate Parcels from Tax Lien. –

(1) When the lien of taxes of any taxing unit for any year attaches to two or more parcels of real property owned by the same taxpayer, the lien may be discharged as to any parcel at any time prior to advertisement of tax foreclosure sale in accordance with either subdivision (b)(1)a or subdivision (b)(1)b:

a. Upon payment, by or on behalf of the listing taxpayer, of the taxes for the year on the parcel or parcels to be released, of the taxes for the year on the parcel or parcels to be released, plus all personal property taxes owed by the listing taxpayer for the same year.

b. Upon payment, by or on behalf of any person (other than the listing taxpayer) who has a legal interest in the parcel or parcels to be released, of the taxes for the year on the parcel or parcels to be released, plus a proportionate part of personal property taxes owed by the listing taxpayer for the same year. The proportionate part shall be a percentage of the personal property taxes equal to the percentage of the total assessed valuation of the taxpayer's real property in the taxing unit represented by the assessed valuation of the parcel or parcels to be released.

(2) When real property listed as one parcel is divided, a part thereof may be released as provided in subdivision (b)(1), above, after the assessed valuation of the part to be released has been determined and certified to the tax collector by the tax supervisor.

(3) It shall be the duty of the tax collector accepting a payment made under this subsection (b) for the purpose of releasing the tax lien from less than all of the taxpayer's real property:

a. To give the person making the payment a receipt setting forth a description of the real property released from the tax lien and bearing a statement that such property is being released from the tax lien.

b. To indicate on the tax receipts, tax records, and other official records of his office what real property has been released from the tax lien.

If the tax collector fails to issue the receipt or make the record entries required by this subdivision (3), the omission may be supplied at any time.

(4) When any parcel of real property has been released under the provisions of this subsection (b) from the lien of taxes of any taxing unit for any year, the property shall not thereafter be subject to the lien of any other regularly levied taxes of the same taxing unit for the same year, whether such other taxes be levied against the listing owner of the property or against some other person acquiring title thereto. No tax foreclosure judgment for such other taxes shall become a lien on the released property; and, upon appropriate request and satisfactory proof of the release by any interested person, the clerk of the superior court shall indicate on the judgment docket that the judgment is not a lien on the released property. However, the failure to make such an entry shall not have the effect of making the judgment a lien on the released property. (1939, c. 310, s. 1704; 1971, c. 806, s. 1.)

§ 105-363. Remedies of cotenants and joint owners of real property.

(a) Payment of Taxes on Share of One Cotenant. – Any one of several tenants in common or joint tenants (other than copartners) of real property may pay that portion of the taxes, interest, and costs that are a lien upon his undivided share of the property and thereby release the tax lien from his share. Thereafter, in any partition sale of the property the share of the joint owner who has paid his portion of the taxes shall be set apart free from the tax lien, and his share of the proceeds of any sale shall not be diminished by disbursements to pay any taxes, interest, or costs. In the event the tax lien is foreclosed and the property is sold for failure to pay taxes, the share of any joint owner who has paid his portion of the taxes shall be excepted from the advertisement and sale.

(b) Payment of Entire Amount of Taxes by One Cotenant. – Any one of several tenants in common or joint tenants (other than copartners) of real property may pay the entire amount of the taxes, interest, and costs constituting a lien on the property, and any amount so paid that is in excess of his share of the taxes, interest, and costs and that was not paid through agreement with or on behalf of the other joint owners shall constitute a lien in his favor upon the shares of the other joint owners. Such a lien may be enforced in a proceeding for actual partition, a proceeding for partition and sale, or by any other appropriate judicial proceeding. (1901, c. 558, ss. 13, 14, 47; Rev., s. 2860; C.S., s. 7983; 1971, c. 806, s. 1.)

§ 105-364. Collection of taxes outside the taxing unit.

(a) Duty of Governing Body. – It shall be the duty of the governing body of each taxing unit to require reports from the tax collector at such times as it may prescribe (but not less frequently than in connection with the tax collector's annual settlement) concerning the efforts he

has made to locate taxpayers who have removed from the taxing unit, the efforts he has made to locate personal property in other taxing units belonging to delinquent taxpayers, and the efforts he has made under the provisions of this section to collect taxes.

(b) Duty to Certify Unpaid Taxes. – If a taxpayer has no personal property or real property subject to the tax lien in the taxing unit but does have personal property in some other taxing unit in this State, or if a taxpayer has removed from the taxing unit, leaving no personal property or real property subject to the tax lien there, and is known to be in some other taxing unit in this State, the tax collector shall forward the tax receipt (with a certificate stating that the taxes are unpaid) for collection to the tax collector of the taxing unit in which the taxpayer is known to have personal property or in which he is known to be. The tax collector may not, however, certify an unpaid tax receipt to another taxing unit if 10 years have elapsed since the date the unpaid taxes became due.

(c) Effect of Certificate; Duty of Receiving Tax Collector. – In the hands of the tax collector receiving them, the copy of the tax receipt and the certificate of nonpayment shall have the force and effect of an unpaid tax receipt of his own taxing unit, and it shall be the receiving tax collector's duty to proceed immediately to collect the taxes by any means by which he could lawfully collect taxes of his own taxing unit. Within 30 days after receiving such a tax receipt and certificate, the collector receiving them shall report to the tax collector that sent them that he has collected the tax, that he has begun proceedings to collect the tax, or that he is unable to collect it. If the tax collector reports that he has begun proceedings to collect the tax, he shall, not later than 90 days after so reporting, make a final report to the tax collector who certified the tax receipt stating that he has collected the tax or that he is unable to collect it.

(1) In acting on a tax receipt and certificate under the provisions of this section, the tax collector receiving them shall, in addition to collecting the amount of taxes certified as due, also impose a fee equal to ten percent (10%) of the amount of taxes certified as unpaid, to be paid into the general fund of his taxing unit.

(2) Within five days after making a collection under the provisions of this section, the tax collector receiving the tax receipt and certificate shall remit the funds collected, less the fee provided for in subdivision (c)(1), above, to the tax collector of the taxing unit that levied the tax.

(3) If the tax collector receiving the tax receipt and certificate reports that he is unable to collect the tax, he shall make his report under oath and shall state therein that he has used due diligence and is unable to collect the tax by levy, attachment and garnishment, or any other legal means.

(d) Liability on Bond. – A tax collector who receives a tax receipt and certificate from the tax collector of another taxing unit under the provisions of subsection (b), above, shall be liable on his bond to the taxing unit that levied the tax for the amount of the taxes certified if:

(1) The tax collector receiving the certified tax receipt fails to make any report to the certifying tax collector within 30 days after receiving the certified tax receipt.

(2) The tax collector receiving the certified tax receipt fails to swear to any report stating that he is unable to collect the certified tax.

(3) Having reported that he has begun proceedings to collect a certified tax, the tax collector receiving the certified tax receipt fails to make a final report within 90 days after reporting that he has begun proceedings for collection. (1939, c. 310, s. 1714; 1955, c. 909; 1963, c. 132; 1971, c. 806, s. 1; 1973, c. 231.)

§ 105-365. Preference accorded taxes in liquidation of debtors' estates.

In all cases in which a taxpayer's assets are in the hands of a receiver or assignee for the benefit of creditors or are otherwise being liquidated or managed for the benefit of creditors, the taxes owed by the debtor (together with interest, penalties, and costs) shall be a preferred claim, second only to administration expenses and specific liens. The provisions of this section shall not be construed to modify or reduce the priority given by G.S. 105-356 to tax liens on real and personal property or to alter or preclude the exercise of any remedies against personal property provided for in G.S. 105-366. (1939, c. 310, s. 1704; 1971, c. 806, s. 1.)

§ 105-365.1. When and against whom collection remedies may be used.

(a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:

(1) For a tax that is not a deferred tax, the date the tax accrues interest.

(2) For a deferred tax, other than a tax described in subdivision (3) of this subsection, the date a disqualifying event occurs.

(3) For a deferred tax under G.S. 105-277.1B that lost its eligibility for deferral due to the death of the owner, the first day of the ninth month following the date of death.

(b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:

(1) To collect delinquent taxes assessed on real property, the owner of record of property on which tax is due as of the date of delinquency and any subsequent owner of record of the property.

(2) To collect delinquent taxes assessed on personal property, the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

(3) To collect delinquent taxes assessed on a registered motor vehicle, the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for. (2008-35, s. 2.8.)

§ 105-366. Remedies against personal property.

(a) Authority to Proceed against Personal Property; Relation between Remedies against Personal Property and Remedies against Real Property. – All tax collectors shall have authority to proceed against personal property to enforce the collection of taxes as provided in this section and in G.S. 105-367 and 105-368. Any tax collector may, in his discretion, proceed first against personal property before employing the remedies for enforcing the lien for taxes against real property, and he shall proceed first against personal property:

(1) When directed to do so by the governing body of the taxing unit; or

(2) When requested to do so by the taxpayer or by a mortgagee or other person holding a lien upon the real property subject to the lien for taxes if the person making the request furnishes the tax collector with a written statement describing the personal property to be proceeded against and giving its location.

No foreclosure of a tax lien on real property may be attacked as invalid on the ground that payment of the tax should have been procured from personal property.

(b) Remedies after Taxes Are Delinquent. – At any time after taxes are delinquent and before the filing of a tax foreclosure complaint under G.S. 105-374 or the docketing of a judgment for taxes under G.S. 105-375, and subject to the provisions of G.S. 105-356 governing the priority of liens, the tax collector may levy upon and sell or attach the following property for failure to pay taxes:

(1) Any personal property owned by the taxpayer, regardless of the time at which it was acquired and regardless of the existence or date of creation of mortgages or other liens thereon.

(2) Any personal property transferred by the taxpayer to a relative (which shall mean any parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, or their spouses, of the taxpayer or his spouse).

(3) Personal property in the hands of a receiver for the taxpayer. (It shall not be necessary for the tax collector to apply for an order of the court directing payment or authorizing the levy or attachment, but he may proceed as though the property were not in the hands of the receiver, and the tax collector's filing of a claim in a receivership proceeding shall not preclude him from proceeding to levy under G.S. 105-367 or to attach under G.S. 105-368.)

(4) Personal property of a deceased taxpayer if the levy or attachment is made before final settlement of the estate.

(5) The stock of goods or fixtures of a wholesale merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer.

(6) Personal property of the taxpayer that has been repossessed by one having a security interest therein so long as the property remains in the hands of the person who has repossessed it or the person to whom it has been transferred other than by bona fide sale for value.

(7) Personal property due the taxpayer or to become due to him within the calendar year.

(8) Personal property of a partner in satisfaction of taxes on partnership property, but only after the tax collector:

a. Has sold the taxing unit's lien for taxes against the partnership real property, if any; and

b. Exhausted the partnership's personal property through the use of levy and attachment and garnishment; and

c. Exercised the authority granted him by G.S. 105-364 in an effort to collect the tax due on the partnership's property.

(9) Personal property transferred by the taxpayer by any type of transfer other than those mentioned in this subsection (b) and other than by bona fide sale for value if the levy or attachment is made within six months of the transfer.

(c) Remedies Before Taxes Are Delinquent. – If between the date as of which property is to be listed and January 6 of the fiscal year for which the taxes are imposed the tax collector has reasonable grounds for believing that the taxpayer is about to remove his property from the taxing unit or transfer it to another person or is in imminent danger of becoming insolvent, the tax

collector may levy on or attach that property or any other personal property of the taxpayer, in the manner provided in G.S. 105-367 and 105-368. If the amount of taxes collected under this subsection has not yet been determined, these taxes shall be computed in accordance with G.S. 105-359 and any applicable discount shall be allowed.

(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale Merchants or Retailers. –

(1) Any wholesale merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or who goes out of business, must take the following actions:

a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice to the assessors and tax collectors of the taxing units in which the business is located.

b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale merchant or retailer is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection and the taxes remain unpaid after the 30-day period allowed, the purchaser or successor is personally liable for the amount of the taxes unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

(3) Whenever any wholesale merchant or retailer sells or transfers the major part of its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, may do any of the following:

a. Levy on or attach any personal property of the seller.

b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any

applicable discount shall be allowed. (1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305, c. 1029, s. 1; 1971, c. 806, s. 1; 1973, c. 564, s. 1; 1987, c. 45, s. 1; c. 93, s. 3; 1998-98, ss. 112, 113.)

§ 105-367. Procedure for levy.

(a) The levy upon the sale of tangible personal property for tax collection purposes (including levy and sale fees) shall be governed by the laws regulating levy and sale under execution except as otherwise provided in this section.

(b) The tax collector or any duly appointed deputy tax collector shall make the levy and conduct the sale; it shall not be necessary for the sheriff to make the levy or conduct the sale. However, upon the authorization of the governing body of the taxing unit, the tax collector may direct an execution against personal property for taxes to the sheriff in the case of county or municipal taxes or to a municipal policeman in the case of municipal taxes. In either case the officer to whom the execution is directed shall proceed to levy on and sell the personal property subject to levy in the manner and with the powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution.

(c) In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the tax collector may advertise the sale in any reasonable manner and for any reasonable period of time he deems necessary to produce an adequate bid for the property. The taxing unit shall advance the cost of all advertising.

(d) Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes. The advertising costs, when collected, shall be used to reimburse the taxing unit for advertising costs it has advanced. Levy and sale fees, when collected, shall be treated in the same manner as other fees received by the collecting official. (1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305; c. 1029, s. 1; 1971, c. 806, s. 1.)

§ 105-368. Procedure for attachment and garnishment.

(a) Subject to the provisions of G.S. 105-356 governing the priority of the lien acquired, the tax collector may attach wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible personal property, including property held in the Escheat Fund, in the circumstances and to the extent prescribed in G.S. 105-366(b), (c), and (d).

In the case of property due the taxpayer or to become due to him within the current calendar year, the person owing the property to the taxpayer or having the property in his possession shall be liable for the taxes to the extent of the amount he owes or has in his possession. However, when wages or other compensation for personal services is attached, the garnishee shall not pay to the tax collector more than ten percent (10%) of such compensation for any one pay period.

(b) To proceed under this section, the tax collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts or other property sought to be attached a notice as provided by this subsection. The notice may be personally served by any deputy or employee of the tax collector or by any officer having authority to serve summonses, or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall contain:

(1) The name of the taxpayer, and if known his Social Security number or federal tax identification number and his address.

(2) The amount of the taxes, penalties, interest, and costs (including the fees allowed by this section) and the year or years for which the taxes were imposed.
(3) The name of the taxing unit or units by which the taxes were levied.
(4) A brief description of the property sought to be attached.
(5) A copy of the applicable law, that is, G.S. 105-366 and 105-368. Notices concerning two or more taxpayers may be combined if they are to be served upon the same garnishee, but the taxes, penalties, interest, and costs charged against each taxpayer must be set forth separately.

(c) If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of the notice answer it by sending to the tax collector by registered or certified mail a statement to that effect, and if the amount demanded by the tax collector is then due to the taxpayer or subject to his demand, the garnishee shall remit it to the tax collector with his statement; but if the amount due to the taxpayer or subject to his demand is to mature in the future, the garnishee's statement shall set forth that fact, and the demand shall be paid to the tax collector upon maturity. Any payment by the garnishee under the provisions of this subsection (c) shall completely satisfy any liability therefor on his part to the taxpayer.

(d) If the garnishee has a defense or setoff against the taxpayer, he shall state it in writing under oath, and, within 10 days after service of the garnishment notice, he shall send two copies of his statement to the tax collector by registered or certified mail. If the tax collector admits the defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of the garnishee's statement, and the attachment or garnishment shall thereupon be discharged to the amount required by the defense or setoff, and any amount attached or garnished which is not affected by the defense or setoff shall be remitted to the tax collector as provided in subsection (c), above.

If the tax collector does not admit the defense or setoff, he shall set forth in writing his objections thereto and send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time the tax collector shall file a copy of the notice of garnishment, a copy of the garnishee's statement, and a copy of the tax collector's objections thereto in the appropriate division of the General Court of Justice of the county in which the garnishee resides or does business, where the issues made shall be tried as in civil actions.

(e) If the garnishee has not responded to the notice of garnishment as required by subsections (c) and (d), above, within 15 days after service of the notice, the tax collector may file in the appropriate division of the General Court of Justice of the county in which the garnishee resides a copy of the notice of garnishment, accompanied by a written statement that the garnishee has not responded thereto and a request for judgment, and the issues shall be tried as in civil actions.

(f) The taxpayer may raise any defenses to the attachment or garnishment that he may have in the manner provided in subsection (d), above, for the garnishee.

(g) The fee for serving a notice of garnishment shall be the same as that charged in a civil action. If judgment is entered in favor of the taxing unit by default or after hearing, the garnishee shall become liable for the taxes, penalties, and interest due by the taxpayer, plus the fees and costs of the action, but payment shall not be required from amounts which are not to become due to the taxpayer until they actually come due. The garnishee may satisfy the judgment upon paying the amount thereof, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered, either the taxing unit or the garnishee may appeal as provided by law.

If, before or after judgment, adequate security is filed for the payment of the taxes, penalties, interest, and costs, the tax collector may release the attachment or garnishment, or execution may be stayed at the request of the tax collector pending appeal, but the final judgment shall be paid or enforced as above provided. If judgment is rendered against the taxing unit, it shall pay the fees and costs of the action. All fees collected by officers shall be disposed of in the same manner as other fees collected by such officers.

(h) Tax collectors may proceed against the wages, salary, or other compensation of officials and employees of this State and its agencies, instrumentalities, and political subdivisions in the manner provided in this section. If the taxpayer is an employee of the State, the notice of attachment shall be served upon him and upon the head or chief fiscal officer of the department, agency, instrumentality, or institution by which he is employed. If the taxpayer is an employee of a political subdivision of the State (county, municipality, etc.), the notice of attachment shall be served upon him and upon the officer charged with making up the payrolls of the political subdivision by which he is employed. All deductions from the wages or salary of a taxpayer made pursuant to this subsection (h) and remitted to the tax collector shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(i) (1) Any person who, after written demand therefor, refuses to give the tax collector or assessor a list of the names and addresses of all of his employees who may be liable for taxes, shall be guilty of a Class 1 misdemeanor.

(2) Any tax collector or assessor who receives, upon his written demand, any list of employees may not release or furnish that list or any copy thereof, or disclose any name or information thereon, to any other person, and may not use that list in any manner or for any purpose not directly related to and in furtherance of the collection and foreclosure of taxes. Any tax collector or assessor who violates or allows the violation of this subdivision (i)(2) shall be guilty of a Class 1 misdemeanor. (1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305, c. 1029, s. 1; 1971, c. 806, s. 1; 1979, c. 103, ss. 3, 4; 1979, 2nd Sess., c. 1085, s. 2; 1981, c. 76, s. 1; 1987, c. 45, s. 1; 1989, c. 580, s. 2; 1993, c. 539, s. 724; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the record owner of each affected parcel of property, as determined as of the date the taxes became delinquent. The notice must be sent to the owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the name of the record owner as of the date the taxes became delinquent will appear in a newspaper advertisement of delinquent taxes if the taxes

are not paid before the publication date. Failure to mail the notice required by this section to the correct record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. – A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.

The posted notice and newspaper advertisement shall set forth the following information:

(1) Repealed by Session Laws 2006-106, s. 2, effective for taxes imposed for taxable years beginning on or after July 1, 2006.

(1a) The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order.

(1b) After the information required by subdivision (1a) of this subsection for each parcel, a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

(d) Costs. – Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subsection are taxes.

(e) Payments during Advertising Period. – At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. – No tax lien is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. – Any tax collector or deputy tax collector who willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes

advertised have been paid is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence. (1939, c. 310, s. 1715; 1955, c. 993; 1971, c. 806, s. 1; 1983, c. 808, s. 1; 1983 (Reg. Sess., 1984), c. 1013; 1993, c. 539, s. 725; 1994, Ex. Sess., c. 24, s. 14(c); 1999-439, s. 1; 2000-140, s. 73; 2006-106, s. 2.)

§§ 105-370 through 105-372: Repealed by Session Laws 1983, c. 808, ss. 2-4.

§ 105-373. Settlements.

(a) Annual Settlement of Tax Collector. –

(1) Preliminary Report. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of G.S. 105-364.) The governing body of the taxing unit may publish this list in any newspaper in the taxing unit. The cost of publishing this list shall be paid by the taxing unit.

(2) Insolvents. – Upon receiving the report required by subdivision (a)(1), above the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.

(3) Settlement for Current Taxes. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year.

a. In the settlement the tax collector shall be charged with:

1. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him and all amounts subsequently charged on account of discoveries;

2. All penalties, interest, and costs collected by him in connection with taxes for the current year; and

3. All other sums collected by him.

b. The tax collector shall be credited with:

1. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;
2. Releases duly allowed by the governing body;
3. The principal amount of taxes constituting liens on real property;
4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
5. Discounts allowed by law;
6. Commissions (if any) lawfully payable to the tax collector as compensation; and
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

(4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)(3), above, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes shall:

a. Give bond satisfactory to the governing body;
b. Receive the tax receipts and tax records representing the uncollected taxes;
c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
d. Receive compensation as determined by the governing body.

(b) Settlements for Delinquent Taxes. – Annually, at the time prescribed for the settlement provided in subdivision (a)(3), above, all persons having in their hands for collection any taxes for years prior to the year involved in the settlement shall settle with the governing body of the taxing unit for collections made on each such year's taxes. The settlement for the taxes for prior years shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(c) Settlement at End of Term. – Whenever any tax collector fails to succeed himself at the end of his term of office, he shall, on the last business day of his term, make full and complete settlement for all taxes (current or delinquent) in his hands and deliver the tax records, tax receipts, tax sale certificates, and accounts to his successor in office. The settlement shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(d) Settlement upon Vacancy during Term. – When a tax collector voluntarily resigns, he shall, upon his last day in office, make full settlement (in the manner provided in subsection (c), above) for all taxes in his hands for collection. In default of such a settlement, or in case of a vacancy occurring during a term for any reason, it shall be the duty of the chief accounting officer

or, in the discretion of the governing body, of some other qualified person appointed by it immediately to prepare and submit to the governing body a report in the nature of a settlement made on behalf of the former tax collector. The report, together with the governing body's action with respect thereto, shall be entered in full upon the minutes of the governing body. Whenever a settlement must be made in behalf of a former tax collector, as provided in this subsection (d), the governing body may deliver the tax receipts, tax records, and tax sale certificates to a successor collector immediately upon the occurrence of the vacancy, or it may make whatever temporary arrangements for the collection of taxes as may be expedient, but in no event shall any person be permitted to collect taxes until he has given bond satisfactory to the governing body.

(e) Effect of Approval of Settlement. – Approval of any settlement by the governing body does not relieve the tax collector or his bondsmen of liability for any shortage actually existing at the time of the settlement and thereafter discovered; nor does it relieve the collector of any criminal liability.

(f) Penalties. – In addition to any other civil or criminal penalties provided by law, any member of a governing body of a taxing unit, tax collector, or chief accounting officer who fails to perform any duty imposed upon him by this section shall be guilty of a Class 1 misdemeanor.

(g) Relief from Collecting Insolvents. – The governing body of any taxing unit may, in its discretion, relieve the tax collector of the charge of taxes owed by persons on the insolvent list that are five or more years past due when it appears to the governing body that such taxes are uncollectible.

(h) Relief from Collecting Taxes on Classified Motor Vehicles. The board of county commissioners may, in its discretion, relieve the tax collector of the charge of taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) that are one year or more past due when it appears to the board that the taxes are uncollectible. This relief, when granted, shall include municipal and special district taxes charged to the collector. (1939, c. 310, s. 1719; 1945, c. 635; 1947, c. 484, ss. 3, 4; 1951, c. 300, s. 1; c. 1036, s. 1; 1953, c. 176, s. 2; 1955, c. 908; 1967, c. 705, s. 1; 1971, c. 806, s. 1; 1983, c. 670, s. 22; c. 808, ss. 5-7; 1987, c. 16; 1991, c. 624, s. 3; 1991 (Reg. Sess., 1992), c. 961, s. 10; 1993, c. 539, s. 726; 1994, Ex. Sess., c. 24, s. 14(c); 1997-456, s. 27; 2006-30, s. 7.)

§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(a) General Nature of Action. – The foreclosure action authorized by this section shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is situated and shall be an action in the nature of an action to foreclose a mortgage.

(b) Taxing units may proceed under this section, either on the original tax lien created by G.S. 105-355(a) or on the lien acquired at a tax lien sale held under former G.S. 105-369 before July 1, 1983, with or without a lien sale certificate; and the amount of recovery in either case shall be the same. To this end, it is hereby declared that the original attachment of the tax lien under G.S. 105-355(a) is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of a lien sale certificate to the taxing unit for lien sales held before July 1, 1983, is a matter of convenience in record keeping within the discretion of the governing body of the taxing unit, and that issuance of such certificates is not a prerequisite to perfection of the tax lien.

(c) Parties; Summonses. – The owner of record as of the date the taxes became delinquent and spouse (if any), any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action

(in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the owner of record as of the date the taxes became delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action.

(c1) Lienholders Separately Designated. – The word "lienholder" shall appear immediately after the name of each lienholder (including trustees and beneficiaries in deeds of trust, and holders of judgment liens) whose name appears in the caption of any action instituted under the provisions of this section. Such designation is intended to make clear to the public the capacity of such persons which necessitated their having been made parties to such action. Failure to add such designation to captions shall not constitute grounds for attacking the validity of actions brought under this section, or titles to real property derived from such actions.

(d) Complaint as Lis Pendens. – The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest therein is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It shall not be necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this subsection (d).

(e) Subsequent Taxes. – The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes which are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property which have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and costs thereon. Immediately prior to judgment ordering sale in a foreclosure action (if there has been no redemption prior to that time), the tax collector or the attorney for the plaintiff unit shall file in the action a certificate setting forth all taxes which are a lien on the real property in favor of the plaintiff unit (other than taxes the amount of which has not been definitely determined).

Any plaintiff in a tax foreclosure action (other than a taxing unit) may include in his complaint, originally or by amendment, all other taxes and special assessments paid by him which were liens on the same real property.

(f) Joinder of Parcels. – All real property within the taxing unit subject to liens for taxes levied against the same taxpayer for the first year involved in the foreclosure action may be joined in one action. However, if real property is transferred by the listing taxpayer subsequent to the first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs (for which the property is ordered sold under the terms of this Subchapter) shall be prorated to such

property in the same manner as if payments were being made to release such property from the tax lien under the provisions of G.S. 105-356(b).

(g) Special Benefit Assessments. – A cause of action for the foreclosure of the lien of any special benefit assessments may be included in any complaint filed under this section.

(h) Joint Foreclosure by Two or More Taxing Units. – Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior court, subject to appeal as provided in G.S. 1-301.1.

(i) Costs. – Subject to the provisions of this subsection (i), costs may be taxed in any foreclosure action brought under this section in the same manner as in other civil actions. When costs are collected, either by payment prior to the sale or upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no prosecution bond shall be required.

The word "costs," as used in this subsection (i), shall be construed to include one reasonable attorney's fee for the plaintiff in such amount as the court shall, in its discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure action and files answer therein, there may be included in the costs an attorney's fee for the defendant unit in such amount as the court shall, in its discretion, determine and allow. The governing body of any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to its attorney as a suit fee, and the governing body may allow a reasonable commission to its attorney on taxes collected by him after they have been placed in his hands; or the governing body may arrange with its attorney for the handling of tax foreclosure suits on a salary basis or may make any other reasonable agreement with its attorney or attorneys. Any arrangement made between a taxing unit and its attorney may provide that attorneys' fees collected as costs in foreclosure actions be collected for the use of the taxing unit.

In any foreclosure action in which real property is actually sold after judgment, costs shall include a commissioner's fee to be fixed by the court, not exceeding five percent (5%) of the

purchase price; and in case of redemption between the date of sale and the order of confirmation, the fee shall be added to the amount otherwise necessary for redemption. In case more than one sale is made of the same property in any action, the commissioner's fee may be based on the highest amount bid, but the commissioner shall not be allowed a separate fee for each such sale. The governing body of any plaintiff unit may request the court to appoint as commissioner a salaried official, attorney, or employee of the unit and, when the requested appointment is made, may require that the commissioner's fees, when collected, be paid to the plaintiff unit for its use.

(j) Contested Actions. – Any action brought under this section in which an answer raising an issue requiring trial is filed within the time allowed by law shall be entitled to a preference as to time of trial over all other civil actions.

(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or as much as may be necessary for the satisfaction of all of the following:

(1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs thereon.

(2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may enter the judgment, subject to appeal as provided in G.S. 1-301.1.

(l) Advertisement of Sale. – The sale shall be advertised, and all necessary resales shall be advertised, in the manner provided by Article 29A of Chapter 1 of the General Statutes or by any statute enacted in substitution therefor.

(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday when the courthouse is closed for transactions. (In actions brought by a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall door.) The commissioner conducting the sale may, in his discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of his bid, which deposit, in the event that the bidder refuses to take title and a resale becomes necessary, shall be applied to pay the costs of sale and any loss resulting. (However, this provision shall not deprive the commissioner of his right to sue for specific performance of the contract.) No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. – Within three days following the foreclosure sale the commissioner shall report the sale to the court giving full particulars thereof.

(o) Exceptions and Increased Bids. – At any time within 10 days after the commissioner files his report of the foreclosure sale, any person having an interest in the real property may file

exceptions to the report, and at any time within that 10-day period an increased bid may be filed in the amount specified by and subject to the provisions (other than provisions in conflict herewith) of Article 29A of Chapter 1 of the General Statutes or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor. In the absence of exceptions or increased bids, the court may, whenever it deems such action necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. – At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be entered by the clerk of superior court subject to appeal as provided in G.S. 1-301.1.

(q) Application of Proceeds; Commissioner's Final Report. – After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

(1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's fee, which costs shall be paid to the officials or funds entitled thereto;

(2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered sold;

(3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and costs thereon;

(4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but which filed no answers therein;

(5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but which filed no answers therein, together with interest and costs thereon;

(6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of such directions, shall be paid into court for the benefit of the persons entitled thereto. (If the clerk is in doubt as to who is entitled to the surplus or if any adverse claims are asserted thereto, the clerk shall hold the surplus until rights thereto are established in a special proceeding pursuant to G.S. 1-339.71.)

Within five days after delivering the deed, the commissioner shall make a full report to the court showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds, accompanied by receipts evidencing all such disbursements.

(r) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by G.S. 105-376. (1939, c. 310, s. 1719; 1945, c. 635; 1947, c. 484, ss. 3, 4; 1951, c. 300, s. 1; c. 1036, s. 1; 1953, c. 176, s. 2; 1955, c. 908; 1967, c. 705, s. 1; 1971, c. 806, s. 1; 1973, c. 788, s. 1; 1981, c. 580; 1983, c. 808, s. 8; 1999-216, ss. 14-16; 2003-337, s. 11; 2006-106, s. 3.)

§ 105-375. In rem method of foreclosure.

(a) Intent of Section. – It is hereby declared to be the intention of this section that proceedings brought under it shall be strictly in rem. It is further declared to be the intention of this section to provide, as an alternative to G.S. 105-374, a simple and inexpensive method of enforcing payment of taxes necessarily levied, to the knowledge of all persons, for the requirements of local governments in this State; and to recognize, in authorizing this proceeding, that all persons owning interests in real property know or should know that the tax lien on their real property may be foreclosed and the property sold for failure to pay taxes.

(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer as defined in G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold.

(c) Notice to Taxpayer and Others. –

(1) Notice required. – The tax collector filing the certificate provided for in subsection (b) of this section, shall, at least 30 days prior to docketing the judgment, send notice of the tax lien foreclosure to the taxpayer, as defined in G.S. 105-273(17), at the taxpayer's last known address, and to all lienholders of record who have a lien against the taxpayer (including any liens referred to in the conveyance of the property to the taxpayer).

(2) Contents of notice. – All notice required by this subsection shall state that a judgment will be docketed and the proposed date of the docketing, that execution will be issued as provided by law, a brief description of the real property affected, and that the lien may be satisfied prior to judgment being entered.

(3) Service of notice. – The notice required by this subsection shall be sent to the taxpayer by registered or certified mail, return receipt requested.

(4) Additional efforts may be required. – If within 10 days following the mailing of the notice, a return receipt has not been received by the tax collector indicating receipt of the notice, then the tax collector shall do both of the following:

a. Make reasonable efforts to locate and notify the taxpayer and all lienholders of record prior to the docketing of the judgment and the issuance of the execution. Reasonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.

b. Have a notice published in a newspaper of general circulation in the county once a week for two consecutive weeks directed to, and naming,

all unnotified lienholders and the taxpayer that a judgment will be docketed against the taxpayer.

(5) Costs of notice added to lien. – All costs of mailing and publication, plus a charge of two hundred fifty dollars ($250.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold.

(d) Effect of Docketing Certificate of Taxes Due. – Immediately upon the docketing and indexing of a certificate as provided in subsection (b), above, the taxes, penalties, interest, and costs shall constitute a valid judgment against the real property described therein, with the priority provided for tax liens in G.S. 105-356. The judgment, except as expressly provided in this section, shall have the same force and effect as a duly rendered judgment of the superior court directing sale of the property for the satisfaction of the tax lien, and it shall bear interest at an annual rate of eight percent (8%).

(e) Special Assessments. – Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this section, or the special assessments may be included in a separate judgment docketed under this section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the waiting period required by subsection (b) of this section does not apply to the foreclosure of special assessments.

(f) Motion to Set Aside. – At any time prior to the issuance of execution, any person having an interest in the real property to be foreclosed may appear before the clerk of superior court and move to set aside the judgment on the ground that the tax has been paid or that the tax lien on which the judgment is based is invalid.

(g) Cancellation upon Payment. – Upon payment in full of any judgment docketed under this section, together with interest thereon and costs accrued to the date of payment, the tax collector receiving payment shall certify the fact thereof to the clerk of superior court and cancel the judgment.

(h) Relationship between G.S. 105-374 and This Section. – If, before the issuance of execution on the judgment under subsection (i), below, the taxing unit is made a defendant in a foreclosure action brought against the property under G.S. 105-374, it shall file an answer in that proceeding and thereafter all proceedings shall be governed by order of the court in accordance with that section.

(i) Issuance of Execution. – At any time after three months and before two years from the indexing of the judgment as provided in subsection (b), above, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

(1) No debtor's exemption shall be allowed.

(2) In lieu of personal service of notice on the taxpayer, the sheriff shall send notice by registered or certified mail, return receipt requested, to the taxpayer at the taxpayer's last known address at least 30 days prior to the day fixed for the sale.

If within 10 days following the mailing of the notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the sheriff shall make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution in accordance with subdivision (4) of subsection (c) of this section.

(3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.

(4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the taxpayer specified in connection with each.

The purchaser at the execution sale shall acquire title to the property in fee simple free and clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments not paid from the purchase price and not included in the judgment.

(j) Attorney's Fee. – The governing body of the taxing unit may make whatever arrangement it deems satisfactory for compensating an attorney rendering assistance or advice in foreclosure proceedings brought under this section, but the attorney's fee shall not be added to the judgment as part of the costs of the action.

(k) Consolidation of Liens. – By agreement between the governing bodies, two or more taxing units may consolidate their tax liens for the purpose of docketing a judgment, or may have one execution issued for separate judgments, against the same property. In like manner, one execution may issue for separate judgments in favor of one or more taxing units against the same property for different years' taxes.

(l) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by G.S. 105-376.

(m) Procedure if Section Declared Unconstitutional. – If any provisions of this section are declared invalid or unconstitutional by the Supreme Court of North Carolina, a United States district court of three judges, the United States Circuit Court of Appeals, or the United States Supreme Court, all taxing units that have proceeded under this section shall have five years from the date of the filing of the opinion (or, in the case of appeal, from the date of the filing of the opinion on appeal) in which to institute foreclosure actions under G.S. 105-374 for all taxes included in judgments taken under this section and for subsequent taxes due or which, but for purchase of the property by the taxing unit, would have become due; and such judicial decision shall not have the effect of invalidating the tax lien or disturbing its priority. (1939, c. 310, s. 1720; 1945, c. 646; 1957, cc. 91, 1262; 1971, c. 806, s. 1; 1973, c. 108, s. 52; c. 681, ss. 1, 2; 1983, c. 808, s. 9; c. 855, ss. 1, 2; 1987, c. 450; 1989, c. 37, s. 7; c. 682; 1999-439, ss. 2, 3; 2001-139, s. 9; 2006-106, ss. 4-6; 2011-352, s. 1.)

§ 105-376. Taxing unit as purchaser at foreclosure sale; payment of purchase price; resale of property acquired by taxing unit.

(a) Taxing Unit as Purchaser. – Any taxing unit (or two or more taxing units jointly) may bid at a foreclosure sale conducted under G.S. 105-374 or G.S. 105-375, and any taxing unit that becomes the successful bidder may assign its bid at any time by private sale for not less than the amount of the bid.

(b) Payment of Purchase Price by Taxing Units; Status of Property Purchased by Taxing Units. – Any taxing unit that becomes the purchaser at a tax foreclosure sale may, in the discretion of its governing body, pay only that part of the purchase price that would not be distributed to it and other taxing units on account of taxes, penalties, interest, and such costs as accrued prior to the initiation of the foreclosure action under G.S. 105-374 or docketing of a judgment under G.S. 105-375. Thereafter, in such a case, the purchasing taxing unit shall hold the property for the benefit of all taxing units that have an interest in the property as defined in this subsection (b). All net income from real property so acquired and the proceeds thereof, when resold, shall be first used to reimburse the purchasing unit for disbursements actually made by it in connection with the foreclosure action and the purchase of the property, and any balance remaining shall be distributed to the taxing units having an interest therein in proportion to their interests. The total interest of each taxing unit, including the purchasing unit, shall be determined by adding:

(1) The taxes of the unit, with penalties, interest, and costs (other than costs already reimbursed to the purchasing unit) to satisfy which the property was ordered sold;

(2) Other taxes of the unit, with penalties, interest, and costs which would have been paid in full from the purchase price had the purchase price been paid in full;

(3) Taxes of the unit, with penalties, interest, and costs to which the foreclosure sale was made subject; and

(4) The principal amount of all taxes which became liens on the property after purchase at the foreclosure sale or which would have become liens thereon but for the purchase, but no amount shall be included for taxes for years in which (on the day as of which property was to be listed for taxation) the property was being used by the purchasing unit for a public purpose.

If the amount of net income and proceeds of resale distributable exceeds the total interests of all taxing units defined in this subsection (b), the remainder shall be applied to any special benefit assessments to satisfy which the sale was ordered or to which the sale was made subject, and any balance remaining shall accrue to the purchasing unit.

When any real property that has been purchased as provided in this section is permanently dedicated to use for a public purpose, the purchasing unit shall make settlement with other taxing units having an interest in the property (as defined in this subsection) in such manner and in such amount as may be agreed upon by the governing bodies; and if no agreement can be reached, the amount to be paid shall be determined by a resident judge of the superior court in the district in which the property is situated.

Nothing in this section shall be construed as requiring the purchasing unit to secure the approval of other interested taxing units before reselling the property or as requiring the purchasing unit to pay other interested taxing units in full if the net income and resale price are insufficient to make such payments.

Any taxing unit purchasing property at a foreclosure sale may, in the discretion of its governing body, instead of following the foregoing provisions of this section, make full payment of the purchase price, and thereafter it shall hold the property as sole owner in the same manner as

it holds other real property, subject only to taxes and special assessments, with penalties, interest, and costs, to which the sale was made subject.

(c) Resale of Real Property Purchased by Taxing Units. – Real property purchased at a tax foreclosure sale by a taxing unit may be resold at any time (for such price as the governing body of the taxing unit may approve) at a sale conducted in the manner provided by law for sales of other real property of the taxing unit. However, a purchasing taxing unit, in the discretion of its governing body, may resell such property to the former owner or to any other person formerly having an interest in the property at private sale for an amount not less than the taxing unit's interest therein if it holds the property as sole owner or for an amount not less than the total interests of all taxing units (other than special assessments due the taxing unit holding title) if it holds the property for the benefit of all such units. (1939, c. 310, s. 1719; 1945, c. 635; 1947, c. 484, ss. 3, 4; 1951, c. 300, s. 1; c. 1036, s. 1; 1953, c. 176, s. 2; 1955, c. 908; 1967, c. 705, s. 1; 1971, c. 806, s. 1.)

§ 105-377. Time for contesting validity of tax foreclosure title.

Notwithstanding any other provisions of law prescribing the period for commencing an action, no action or proceeding shall be brought to contest the validity of any title to real property acquired by a taxing unit or by a private purchaser in any tax foreclosure action or proceeding authorized by this Subchapter or by other laws of this State in force at the time the title was acquired, nor shall any motion to reopen or set aside the judgment in any such tax foreclosure action or proceeding be entertained after one year from the date on which the deed is recorded. (1939, c. 310, s. 1721; 1971, c. 806, s. 1; 1977, c. 886, s. 2.)

§ 105-378. Limitation on use of remedies.

(a) Use of Remedies Barred. – No county or municipality may maintain an action or procedure to enforce any remedy provided by law for the collection of taxes or the enforcement of any tax liens (whether the taxes or tax liens are evidenced by the original tax receipts, tax sales certificates, or otherwise) unless the action or procedure is instituted within 10 years from the date the taxes became due.

(b) Not Applicable to Special Assessments. – The provisions of subsection (a), above, shall not be construed to apply to the lien of special assessments.

(c) Repealed by Session Laws 1998-98, s. 26, effective August 14, 1998.

(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the county board of equalization and review or the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer. (1933, c. 181, s. 7; c. 399; 1945, c. 832; 1947, c. 1065, s. 1; 1949, cc. 60, 269, 735; 1951, cc. 71, 306, 572; 1953, cc. 381, 427, 538, 645, 656, 752, 775, 1008; 1955, c. 1087; 1957, cc. 53, 678, 1123; 1959, cc. 373, 608; 1961, cc. 542, 695, 885; 1965, cc. 129, 294; 1967, c. 242; c. 321, s. 1; c. 422, s. 1; 1969, c. 96; 1971, c. 806, s. 1; 1998-98, s. 26; 2006-30, s. 6; 2011-3, s. 3(b).)

Article 27.

Refunds and Remedies.

§ 105-379. Restriction on use of injunction and claim and delivery.

(a) Grounds for Injunction. – No court may enjoin the collection of any tax, the sale of any tax lien, or the sale of any property for nonpayment of any tax imposed under the authority of this Subchapter except upon a showing that the tax (or some part thereof) is illegal or levied for an illegal or unauthorized purpose.

(b) No Order in Claim and Delivery. – No court may issue any order in claim and delivery proceedings or otherwise for the taking of any personal property levied on or attached by the tax collector under the authority of this Subchapter. (1901, c. 558, s. 30; Rev., s. 2855; C.S., s. 7979; 1971, c. 806, s. 1.)

§ 105-380. No taxes to be released, refunded, or compromised.

(a) The governing body of a taxing unit is prohibited from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this Subchapter.

(b) Taxes that have been released, refunded, or compromised in violation of this section shall be deemed to be unpaid and shall be collectible by any means provided by this Subchapter, and the existence and priority of any tax lien on property shall not be affected by the unauthorized release, refund, or compromise of the tax liability.

(c) Any tax that has been released, refunded, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, refund, or compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

(d) The provisions of this section are not intended to restrict or abrogate the powers of a board of equalization and review or any agency exercising the powers of such a board.

(e) **(Expires July 1, 2016)** The governing body of a municipality shall release any tax levied under this Subchapter, without application from the taxpayer being required, on property that was within the corporate limits of the municipality for six months or less prior to deannexation from the municipality, and for which no notice of the tax has yet been sent to the taxpayer. The release shall be made in accordance with the provisions of this Article. (1901, c. 558, s. 31; Rev., s. 2854; C.S., s. 7976; 1971, c. 806, s. 1; 1973, c. 564, s. 2; 2013-19, s. 1.)

§ 105-381. Taxpayer's remedies.

(a) Statement of Defense. – Any taxpayer asserting a valid defense to the enforcement of the collection of a tax assessed upon his property shall proceed as hereinafter provided.

(1) For the purpose of this subsection, a valid defense shall include the following:

a. A tax imposed through clerical error;

b. An illegal tax;

c. A tax levied for an illegal purpose.

(2) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for release of the tax at any time prior to payment of the tax.

(3) If a tax has been paid, the taxpayer, at any time within five years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof.

(b) Action of Governing Body. – Upon receiving a taxpayer's written statement of defense and request for release or refund, the governing body of the taxing unit shall within 90 days after receipt of such request determine whether the taxpayer has a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made. The governing body may, by resolution, delegate its authority to determine requests for a release or refund of tax of less than one hundred dollars ($100.00) to the finance officer, manager, or attorney of the taxing unit. A finance officer, manager, or attorney to whom this authority is delegated shall monthly report to the governing body the actions taken by him on requests for release or refund. All actions taken by the governing body or finance officer, manager, or attorney on requests for release or refund shall be recorded in the minutes of the governing body. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.

(c) Suit for Recovery of Property Taxes. –

(1) Request for Release before Payment. – If within 90 days after receiving a taxpayer's request for release of an unpaid tax claim under (a) above, the governing body of the taxing unit has failed to grant the release, has notified the taxpayer that no release will be granted, or has taken no action on the request, the taxpayer shall pay the tax. He may then within three years from the date of payment bring a civil action against the taxing unit for the amount claimed.

(2) Request for Refund. – If within 90 days after receiving a taxpayer's request for refund under (a) above, the governing body has failed to refund the full amount requested by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on the request, the taxpayer may bring a civil action against the taxing unit for the amount claimed. Such action may be brought at any time within three years from the expiration of the period in which the governing body is required to act.

(d) Civil Actions. – Civil actions brought pursuant to subsection (c) above shall be brought in the appropriate division of the general court of justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the tax or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a clerical error, judgment shall be rendered therefor with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions. (1901, c. 558, s. 30; Rev., s. 2855; C. S., s. 7979; 1971, c. 806, s. 1; 1973, c. 564, s. 3; 1977, c. 946, s. 2; 1985, c. 150, s. 1; 1987, c. 127.)

§ 105-382. Repealed by Session Laws 1977, c. 946, s. 3.

Article 28.

Special Duties to Pay Taxes.

§ 105-383. Fiduciaries to pay taxes.

(a) Duty to Pay. – It shall be the duty of every guardian, executor, administrator, agent, trustee, receiver, or other fiduciary having care or control of any real or personal property to pay the taxes thereon out of the trust funds in his hands.

(b) Liability for Failure to Pay. – Any fiduciary who fails to pay the taxes on property in his care or control when trust funds are available to him for that purpose shall be personally liable for the taxes. This liability may be enforced by a civil action brought in the name of the tax collector of the taxing unit to which the taxes are owed against the fiduciary in an appropriate division of the General Court of Justice of the county in which the taxing unit is located.

(c) Liability for Sale of Property. – Any fiduciary who suffers property in his care or control to be sold by reason of his negligence in failing to pay the taxes thereon when available funds were in his hands shall be liable to his ward, principal, or cestui que trust for all actual damages incurred as a result of his neglect.

(d) Effect of Section. – This section shall not have the effect of relieving property and estates held in trust or under the control of fiduciaries from the lien of property taxes. (1762, c. 69, s. 14; R.C., c. 54, s. 27; 1868-9, c. 201, s. 32; 1879, c. 71, s. 53; Code, ss. 1595, 3698; Rev., s. 2862; C.S., s. 7985; 1971, c. 806, s. 1.)

§ 105-384. Duties and liabilities of life tenant.

(a) If real or personal property is held by a tenant for life or by a tenant for the life of another, it shall be the duty of the life tenant to pay the taxes imposed on the property.

(b) Any remainderman or reversioner of real or personal property who pays the taxes thereon may recover the money so paid in an action against the life tenant of the property; in the case of real property, the action may be brought only in the appropriate division of the General Court of Justice of the county in which the real property is located.

(c) Any tenant for life of real or personal property who suffers the property to be foreclosed and sold or sold under levy for failure to pay the taxes thereon shall be liable to the remainderman or to the reversioner for any damages incurred. (1879, c. 71, ss. 53, 54; Code, ss. 3698, 3699; 1901, c. 558, s. 45; Rev., s. 2859; C.S., s. 7982; 1971, c. 806, s. 1.)

§ 105-385. Duty to pay taxes on real property; judicial sales; sales under powers; governmental purchasers.

(a) Judicial Sales. – In all civil actions and special proceedings in which the sale of any real property is ordered, the judgment shall provide for the payment of all taxes then constituting a lien upon the property and all special assessments or installments thereof then due, and the tax liens and special assessments shall be satisfied from the proceeds of the sale before the proceeds are disbursed. The judgment in such a civil action or special proceeding shall adjust the disbursements for taxes and special assessments between the parties to the action or special proceeding in accordance with their respective rights.

(b) Sales under Powers. – Any person who sells real property under a power of sale conferred upon him by a deed, will, power of attorney, mortgage, deed of trust, or assignment for

the benefit of creditors shall from the proceeds of the sale first satisfy all taxes constituting a lien upon the real property and all special assessments or installments thereof then due unless the notice of sale provided that the property would be sold subject to tax liens and special assessments, and it was so sold.

(c) Governmental Purchasers. – Any agency, department, or institution of the State of North Carolina and any county or municipal corporation that purchases real property shall satisfy all taxes constituting a lien upon the property purchased and all special assessments or installments thereof then due by deducting the amount of the taxes and special assessments from the purchase price and paying it to the proper taxing unit or units. Any agency, department, or institution of the State and any county or municipal corporation that fails to make the deductions and payments required by this subsection (c) shall be liable to the taxing unit or units to which the taxes and special assessments are owed for the amount thereof. This liability may be enforced in a civil action brought by the taxing unit or units to which the taxes and special assessments are owed in the appropriate trial division of the General Court of Justice of the county in which the property is located; this remedy shall be in addition to any remedies the taxing unit may have against the grantor of the property. (1901, c. 558, s. 47; Rev., s. 2857; C.S., s. 7980; 1929, c. 231, s. 1; 1951, c. 252, s. 1; 1971, c. 806, s. 1.)

§ 105-386. Tax paid by holder of lien; remedy.

If any person having a lien or encumbrance of any kind upon real property shall pay the taxes that constitute a lien upon the real property:

(1) He shall thereby acquire a lien upon the real property from the time of payment, which lien shall be superior to all other liens and which may be enforced by an action in the appropriate division of the General Court of Justice of the county in which the real property is situated.

(2) He may, by an action for moneys paid to the use of the owner of the real property at the time of payment, recover the amount paid. (1879, c. 71, s. 55; Code, s. 3700; 1901, c. 558, s. 46; Rev., s. 2858; C.S., s. 7981; 1971, c. 806, s. 1.)

Article 29.

Validations.

§§ 105-387 through 105-392: Recodified as §§ 47-108.21 to 47-108.26 by Session Laws 1987, c. 777, s. 4(1).

§ 105-393. Repealed by Session Laws 1987, c. 777, s. 4(2).

Article 30.

General Provisions.

§ 105-394. Immaterial irregularities.

Immaterial irregularities in the listing, appraisal, or assessment of property for taxation or in the levy or collection of the property tax or in any other proceeding or requirement of this

Subchapter shall not invalidate the tax imposed upon any property or any process of listing, appraisal, assessment, levy, collection, or any other proceeding under this Subchapter.

The following are examples of immaterial irregularities:

(1) The failure of list takers, tax supervisors, or members of boards of equalization and review to take and subscribe the oaths required of them.

(2) The failure to sign the affirmation required on the abstract.

(3) The failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law.

(4) The failure of the board of equalization and review to meet or to adjourn within the time prescribed by law or to give any required notice of its meetings and adjournment.

(5) Any defect in the description upon any abstract, tax receipt, tax record, notice, advertisement, or other document, of real or personal property, if the description be sufficient to enable the tax collector or any person interested to determine what property is meant by the description. (In such cases the tax supervisor or tax collector may correct the description on the documents bearing the defective description, and the correct description shall be used in any documents later issued in tax foreclosure proceedings authorized by this Subchapter.)

(6) The failure of the collector to advertise any tax lien.

(7) Repealed by Session Laws 1983, c. 808, s. 11.

(8) Any irregularity or informality in the order or manner in which tax liens on real property are offered for sale.

(9) The failure to make or serve any notice mentioned in this Subchapter.

(10) The omission of a dollar mark or other designation descriptive of the value of figures upon any document required by this Subchapter.

(11) Any other immaterial informality, omission, or defect on the part of any person in any proceeding or requirement of this Subchapter. (1939, c. 310, s. 1715; 1965, c. 192, ss. 1, 2; 1971, c. 806, s. 1; 1983, c. 808, ss. 10, 11.)

§ 105-395. Application and effective date of Subchapter.

(a) The provisions of G.S. 105-333 through 105-344 (being Article 23 in this Subchapter) shall first be applicable to public service company property to be listed or reported for taxation as of January 1, 1972. Unless otherwise specifically provided herein, all other provisions of this Machinery Act (being Subchapter II of Chapter 105 of the General Statutes) shall become effective July 1, 1971, and shall apply to all taxes due and uncollected as of that date as well as to those that shall become due thereafter.

(b) Repealed by Session Laws 1998-98, s. 27.

(c) It is the intent of the General Assembly to make the provisions of this Subchapter uniformly applicable throughout the State, and to assure this objective all laws and clauses of laws, including private and local acts, other than local acts relating to the selection of tax collectors, in conflict with this Subchapter are repealed effective July 1, 1971. As used in this section, the term "local acts" means any acts of the General Assembly that apply to one or more counties by name, to one or more municipalities by name, or to all municipalities within one or more named counties. (1971, c. 806, s. 1; 1993, c. 485, s. 19; 1998-98, s. 27.)

§ 105-395.1. (Effective for taxes imposed for taxable years beginning before July 1, 2017) Applicable date when due date falls on weekend or holiday.

When the last day for doing an act required or permitted by this Subchapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day. (1987, c. 777, s. 5.)

§ 105-395.1. (Effective for taxes imposed for taxable years beginning on or after July 1, 2017) Applicable date when due date falls on weekend, holiday, or closure date.

When the last day for doing an act required or permitted by this Subchapter falls on a day listed in this section, the act is considered to be done within the prescribed time limit if it is done on the next business day. This section applies to the following days:

(1) A Saturday or Sunday.
(2) A holiday.
(3) A day for which all of the following conditions are met in the taxing entity:
  a. The tax office is closed.
  b. The taxpayer certifies in writing that the United States Postal Service did not provide service to the taxpayer's address.
  c. A disaster declaration is declared pursuant to G.S. 166A-19.21 or G.S. 166A-19.22. (1987, c. 777, s. 5; 2018-5, s. 38.9(a); 2018-76, s. 9.5.)

§§ 105-396 through 105-398: Repealed by Session Laws 1971, c. 806, s. 1.

SUBCHAPTER III. COLLECTION OF TAXES.

Former Article 30.

General Provisions.

§§ 105-399 through 105-403: Repealed by Session Laws 1971, c. 806, s. 3.

§ 105-404: Transferred to G.S. 105-32 by Session Laws 1971, c. 806, s. 2.

§ 105-405: Repealed by Session Laws 1963, c. 548.

§§ 105-405.1 through 105-406: Repealed by Session Laws 1971, c. 806, s. 3.

§ 105-407: Transferred to G.S. 105-267.1 by Session Laws 1971, c. 806, s. 2.

Article 31.

Rights of Parties Adjusted.

§§ 105-408 through 105-411: Repealed by Session Laws 1971, c. 806, s. 3.

§ 105-412: Transferred to G.S. 105-207 by Session Laws 1971, c. 806, s. 2.

Article 32.

Tax Liens.

§§ 105-413 through 105-414: Repealed by Session Laws 1971, c. 806, s. 3.

Article 33.

Time and Manner of Collection.

§§ 105-415 through 105-417: Repealed by Session Laws 1971, c. 806, s. 3.

Article 33A.

Agreements with United States or Other States.

§§ 105-417.1 through 105-417.3: Transferred to G.S. 105-268.1 through 105-268.3 by Session Laws 1971, c. 806, s. 2.

Article 34.

Tax Sales.

Part 1. Sale of Realty.

§§ 105-418 through 105-421: Repealed by Session Laws 1971, c. 806, s. 3.

Part 2. Refund of Tax Sales Certificates.

§ 105-422: Repealed by Session Laws 1971, c. 806, s. 3.

§ 105-423. Repealed by Session Laws 1947, c. 1065, s. 2.

§ 105-423.1. Repealed by Session Laws 1971, c. 806, s. 3.

Article 35.

Sheriff's Settlement of Taxes.

§ 105-424. Repealed by Session Laws 1971, c. 806, s. 3.

SUBCHAPTER IV. LISTING OF AUTOMOBILES.

Article 35A.

Listing of Automobiles in Certain Counties.

§§ 105-425 through 105-429: Repealed by Session Laws 1971, c. 806, s. 3.

SUBCHAPTER V. MOTOR FUEL TAXES.

Article 36.

Gasoline Tax.

§§ 105-430 through 105-435: Repealed by Session Laws 1995, c. 390, s. 2.

§ 105-436: Repealed by Session Laws 1991, c. 193, s. 5.

§ 105-436.1. Repealed by Session Laws 1985, c. 261, s. 1.

§105-437. Repealed by Session Laws 1963, c. 1169, s. 6.

§§ 105-438 through 105-441.1: Repealed by Session Laws 1995, c. 390, s. 2.

§ 105-442: Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 913, s. 3.

§ 105-443. Repealed by Session Laws 1963, c. 1169, s. 5.

§§ 105-444 through 105-446.3: Repealed by Session Laws 1995, c. 390, s. 2.

§ 105-446.3:1. Repealed by Session Laws 1985, c. 261, s. 1.

§ 105-446.4. Repealed by Session Laws 1977, c. 802, s. 50.10.

§§ 105-446.5 through 105-449A: Repealed by Session Laws 1995, c. 390, s. 2.

§ 105-449.01: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1004, s. 1.

Article 36A.

Special Fuels Tax.

§§ 105-449.1 through 105-449.27: Repealed by Session Laws 1995, c. 390, s. 2.

§ 105-449.28. Repealed by Session Laws 1981, c. 105, s. 4.

§ 105-449.29: Repealed by Session Laws 1995, c. 390, s. 2.

§§ 105-449.30 through 105-449.31. Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 19.

§ 105-449.32: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 27.

§§ 105-449.33 through 105-449.35: Repealed by Session Laws 1995, c. 390, s. 2.

§ 105-449.36: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1004, s. 1.

Article 36B.

Tax on Motor Carriers.

§ 105-449.37. Definitions; tax liability; application.

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

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of January 1, 2017.

(2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle. The term does not include the United States, a state, or a political subdivision of a state.

(3) Motor vehicle. – Defined in G.S. 20-4.01.

(4) Operations. – The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

(5) Person. – Defined in G.S. 105-228.90.

(6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.

(7) Secretary. – Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period.

(c) Application. – A motor carrier who operates a qualified motor vehicle in this State must submit an application, as provided in this Article, and obtain the appropriate license and decals for the vehicle. The Article applies to both an interstate motor carrier subject to the International Fuel Tax Agreement and to an intrastate motor carrier. (1955, c. 823, s. 1; 1973, c. 476, s. 193; 1983, c. 713, s. 55; 1989, c. 7, s. 1; 1991, c. 182, s. 2; c. 487, s. 2; 1991 (Reg. Sess., 1992), c. 913, s. 8; 1993, c. 354, s. 28; 1999-337, s. 36; 2000-140, s. 74; 2008-134, s. 16; 2010-95, s. 27; 2014-3, s. 9.5(b); 2017-39, s. 11.)

§ 105-449.38. Tax levied.

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor carriers. (1955, c. 823, s. 2; 1969, c. 600, s. 22; 1981, c. 690, s. 3; 1985 (Reg. Sess., 1986), c. 982, s. 16; 1995, c. 390, s. 16; 2001-205, s. 2; 2008-134, s. 17.)

§ 105-449.39. Credit for payment of motor fuel tax.

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly return for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the tax rate in effect under G.S. 105-449.80 for the time period covered by the return. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the excess is refundable in accordance with G.S. 105-241.7. (1955, c. 823, s. 3; 1969, c. 600, s. 22; c. 1098; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1098; 1981, c. 690, s. 3; 1985 (Reg. Sess., 1986), c. 982, s. 17; 1987, c. 315; 1989, c. 692, s. 5.7; 1991, c. 182, s. 3; c. 487, s. 3; 1998-146, s. 1; 1999-337, s. 37; 2005-435, s. 3; 2007-491, s. 40; 2010-95, s. 26(a); 2016-5, s. 4.10(a).)

§ 105-449.40. Secretary may require bond.

(a) Authority. – The Secretary may require a motor carrier to furnish a bond when any of the following occurs:

(1) The motor carrier fails to file a return within the time required by this Article.
(2) The motor carrier fails to pay a tax when due under this Article.
(3) After auditing the motor carrier's records, the Secretary determines that a bond is needed to protect the State from loss in collecting the tax due under this Article.

(b) Amount. – A bond required of a motor carrier under this section may not be more than the larger of the following amounts:

(1) Five hundred dollars ($500.00).
(2) Four times the motor carrier's average tax liability or refund for a reporting period.

A bond must be in the form required by the Secretary. (1955, c. 823, s. 4; 1967, c. 1110, s. 15; 1973, c. 476, s. 193; 1991, c. 487, s. 4; 2010-95, s. 26(b).)

§ 105-449.41: Repealed by Session Laws 2002-108, s. 2, effective January 1, 2003.

§ 105-449.42. Payment of tax.

The tax levied by this Article is due when a motor carrier files a quarterly return under G.S. 105-449.45. The amount of tax due is calculated on the amount of motor fuel or alternative fuel used by the motor carrier in its operations within this State during the quarter covered by the return. (1955, c. 823, s. 6; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1086, s. 2; 1983, c. 29, s. 2; 1991, c. 182, s. 4; 1999-337, s. 38; 2010-95, s. 26(c).)

§ 105-449.42A. Leased motor vehicles.

(a) Lessor in Leasing Business. – A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation is the motor carrier for a leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the Secretary written notice, by filing a return or otherwise, that the lessee is the

motor carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor vehicle.

Before a lessee gives the Secretary written notice under this subsection that the lessee is the motor carrier, the lessee and lessor must make a written agreement for the lessee to be the motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the agreement.

(b) Independent Contractor. – The lessee of a motor vehicle that is leased from an independent contractor is the motor carrier for the leased motor vehicle unless one of the circumstances listed in this subsection applies. If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

(1) The motor vehicle is leased for fewer than 30 days.

(2) The motor vehicle is leased for at least 30 days and the lessor gives the Secretary written notice, by filing a return or otherwise, that the lessor is the motor carrier. Before a lessor gives the Secretary written notice that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.

(c) Liability. – An independent contractor who leases a motor vehicle to another for fewer than 30 days is liable for compliance with this Article and the person to whom the motor vehicle is leased is not liable. Otherwise, both the lessor and lessee of a motor vehicle are jointly and severally liable for compliance with this Article. (1983, c. 29, s. 3; 1985 (Reg. Sess., 1986), c. 826, s. 11; 1991, c. 487, s. 5; 1991 (Reg. Sess., 1992), c. 913, s. 9; 2010-95, s. 26(d).)

§ 105-449.43. Application of tax proceeds.

Tax revenue collected under this Article and tax refunds or credits allowed under this Article shall be allocated among and charged to the funds and accounts listed in G.S. 105-449.125 in accordance with that section. (1955, c. 823, s. 7; 1981 (Reg. Sess., 1982), c. 1211, s. 3; 1989, c. 692, s. 1.16; 1995, c. 390, s. 17.)

§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.

(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified motor vehicles during that period.

(b) Presumption. – The Secretary must check returns filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the returns required by this Article. If the records indicate that a motor carrier operated in this State in a quarter and either did not file a return for that quarter or understated its mileage in this State on a return filed for that quarter by at least twenty-five

percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon.

(c) Vehicles. – The number of qualified motor vehicles of a motor carrier that is licensed under this Article is the number of sets of decals issued to the carrier. The number of qualified motor vehicles of a carrier that is not licensed under this Article is the number of qualified motor vehicles licensed or registered by the motor carrier in the carrier's base state under the International Registration Plan. (1955, c. 823, s. 8; 1995, c. 390, s. 35; 1999-337, s. 39; 2000-173, s. 12; 2005-435, s. 4; 2008-134, s. 18; 2010-95, s. 26(e); 2011-145, s. 19.1(g); 2017-204, s. 4.4(a).)

§ 105-449.45. Returns of carriers.

(a) Return. – A motor carrier must report its operations to the Secretary on a quarterly basis unless subsection (b) of this section exempts the motor carrier from this requirement. A quarterly return covers a calendar quarter and is due by the last day in April, July, October, and January. A return must be filed in the form required by the Secretary.

(b) Exemptions. – A motor carrier is not required to file a quarterly return if any of the following applies:

(1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.

(2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for licensure with the Secretary.

(c) Informational Returns. – A motor carrier must file with the Secretary any informational returns concerning its operations that the Secretary requires.

(d) Penalties. – A motor carrier that fails to file a return under this section by the required date is subject to a penalty of fifty dollars ($50.00).

(e) Interest. – Interest on overpayments and underpayments of tax imposed on motor carriers under this Article is subject to the interest rate adopted in the International Fuel Tax Agreement. (1955, c. 823, s. 9; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1086, s. 2; 1981 (Reg. Sess., 1982), c. 1254, s. 2; 1989 (Reg. Sess., 1990), c. 1050, s. 1; 1991, c. 182, s. 5; 1995, c. 17, s. 13.1; 1998-212, s. 29A.14(q); 1999-337, s. 40; 2009-445, s. 31(a); 2010-95, s. 26(f); 2016-5, s. 4.8; 2017-204, s. 4.4(b).)

§ 105-449.46. Inspection of books and records.

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes. (1955, c. 823, s. 10; 1973, c. 476, s. 193; 2005-435, s. 5.)

§ 105-449.47. Licensure of vehicles.

(a) Requirement. – A motor carrier may not operate or cause to be operated in this State a qualified motor vehicle unless both the motor carrier and at least one qualified motor

vehicle are licensed as provided in this subsection. This subsection applies to a motor carrier that operates a recreational vehicle that is used in connection with any business endeavor. A motor carrier that is subject to the International Fuel Tax Agreement must be licensed with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement must be licensed with the Secretary for purposes of the tax imposed by this Article.

(a1) License and Decal. – When the Secretary licenses a motor carrier, the Secretary must issue a license for the motor carrier and a set of decals for each qualified motor vehicle. A motor carrier must keep records of decals issued to it and must be able to account for all decals it receives from the Secretary. Licenses and decals issued by the Secretary are for a calendar year. All decals issued by the Secretary remain the property of the State. The Secretary may revoke a license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its license in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display one decal on each side of the vehicle at all times. A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a qualified motor vehicle that is licensed in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage. (1955, c. 823, s. 11; 1973, c. 746, s. 193; 1983, c. 713, s. 56; 1985 (Reg. Sess., 1986), c. 937, s. 20; 1989, c. 692, s. 6.2; 1991, c. 487, s. 6; 1995, c. 50, s. 5; c. 390, s. 18; 1999-337, s. 41; 2002-108, s. 3; 2004-170, s. 24; 2005-435, s. 6; 2008-134, s. 19; 2014-3, s. 9.5(c); 2017-204, s. 4.4(c).)

§ 105-449.47A. Denial of license application and decal issuance.

The Secretary may refuse to license and issue a decal to an applicant that does not meet the requirements set out in G.S. 105-449.69(b) or that has done any of the following:

(1) Had a license issued under Chapter 105 or Chapter 119 of the General Statutes revoked by the Secretary.
(2) Had a license issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, revoked.
(3) Been convicted of fraud or misrepresentation.
(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if licensed and issued a decal.
(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes. (2005-435, s. 7; 2008-134, s. 20; 2009-445, s. 32; 2010-95, s. 28; 2017-204, s. 4.4(d).)

§ 105-449.48: Repealed by Session Laws 2006-162, s. 12(c), effective July 24, 2006.

§ 105-449.49. Temporary permits.

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a permitting service may obtain a temporary permit authorizing a motor carrier to operate a vehicle in the State for three days without licensing the vehicle in accordance with G.S. 105-449.47. The permitting service may sell the temporary permit to a motor carrier. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Repealed by Session Laws 2016-5, s. 4.6, effective May 11, 2016. (1955, c. 823, s. 13; 1973, c. 476, s. 193; 1979, c. 11; 1981 (Reg. Sess., 1982), c. 1254, s. 1; 1983, c. 713, s. 58; 1991, c. 182, s. 6; c. 487, s. 7; 1991 (Reg. Sess., 1992), c. 913, s. 10; 2003-349, s. 10.1; 2006-162, s. 12(d); 2016-5, s. 4.6; 2017-204, s. 4.4(e).)

§ 105-449.50. Repealed by Session Laws 2008-134, s. 21.

§ 105-449.51. Violations declared to be misdemeanors.

A person who operates or causes to be operated on a highway in this State a qualified motor vehicle that does not carry a license as required by this Article, does not properly display a decal as required by this Article, or is not licensed in accordance with this Article commits a Class 3 misdemeanor and is punishable by a fine of two hundred dollars ($200.00). Each day's operation in violation of this section constitutes a separate offense. (1955, c. 823, s. 15; 1973, c. 476, s. 193; 1983, c. 713, s. 59; 1993, c. 539, s. 734; 1994, Ex. Sess., c. 24, s. 14(c); 2005-435, s. 8; 2008-134, s. 22; 2017-204, s. 4.4(f).)

§ 105-449.52. Civil penalties applicable to motor carriers.

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

(1) Operates in this State or causes to be operated in this State a qualified motor vehicle that either fails to carry the license required by this Article or fails to display a decal in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for a decal the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each decal for which the carrier is unable to account.

(3) Displays a decal on a qualified motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the decal and the motor carrier displaying the unlawfully obtained decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a qualified motor vehicle is found to be operating without a

license or a decal or with a decal the Secretary did not issue for the vehicle, the qualified motor vehicle may not be driven for a purpose other than to park it until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operating it will not jeopardize collection of the penalty.

(b) Penalty Reduction. – The Secretary may reduce or waive the penalty as provided under G.S. 105-449.119. (1955, c. 823, s. 16; 1957, c. 948; 1973, c. 476, s. 193; 1975, c. 716, s. 5; 1981, c. 690, s. 18; 1983, c. 713, s. 60; 1991, c. 42, s. 14; 1991 (Reg. Sess., 1992), c. 913, s. 11; 1998-146, s. 2; 1999-337, s. 43; 2002-108, s. 4; 2004-170, s. 25; 2007-527, s. 16(a); 2008-134, ss. 8, 23; 2014-3, s. 9.8(a); 2017-204, s. 4.4(g).)

§ 105-449.53. Repealed by Session Laws 1963, c. 1169, s. 6.

§ 105-449.54. Commissioner of Motor Vehicles made process agent of nonresident motor carriers.

By operating a motor vehicle on the highways of this State, a nonresident motor carrier consents to the appointment of the Commissioner of Motor Vehicles as its attorney in fact and process agent for all summonses or other lawful process or notice in any action, assessment, or other proceeding under this Chapter. (1955, c. 823, s. 18; 2004-170, s. 26.)

§§ 105-449.55 through 105-449.56: Repealed by Session Laws 1991, c. 42, s. 17.

§ 105-449.57. Cooperative agreements between jurisdictions.

(a) Authority. – The Secretary may enter into cooperative agreements with other jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary or the Secretary's designee.

(b) Content. – An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor carrier taxes and penalties to another jurisdiction, and any other provisions that will facilitate the administration of the agreement.

(c) Disclosure. – In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another jurisdiction any information in the Department's possession relative to the administration and collection of a tax imposed on the use of motor fuel or alternative fuel by any motor carrier. The Secretary may disclose to officials of another jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

(d) Audits. – An agreement may provide for each jurisdiction to audit the records of motor carriers based in the jurisdiction to determine if the taxes due each jurisdiction are properly reported and paid. Each jurisdiction must forward the findings of the audits performed on motor carriers based in the jurisdiction to each jurisdiction in which the

carrier has taxable use of motor fuel or alternative fuel. For motor carriers not based in this State, the Secretary may utilize the audit findings received from another jurisdiction as the basis upon which to propose assessments of taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest must be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

(e) Restriction. – The Secretary or the Secretary's designee may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes. Any provision to the contrary is void. (1989, c. 667, s. 1; 1993, c. 485, s. 36; 1995 (Reg. Sess., 1996), c. 647, s. 50; 1999-337, s. 42; 2016-5, ss. 4.5(b), 4.7(a), (b).)

§ 105-449.58. Reserved for future codification purposes.

§ 105-449.59. Reserved for future codification purposes.

Article 36C.

Gasoline, Diesel, and Blends.

Part 1. General Provisions.

§ 105-449.60. Definitions.

The following definitions apply in this Article:

(1) Additive. – A de minimus amount of product that is added or mixed with motor fuel. Examples of an additive include fuel system detergent, an oxidation inhibitor, gasoline antifreeze, or an octane enhancer.

(2) Aviation gasoline. – Fuel blended or produced specifically for use in an aircraft motor.

(3) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.

(4) Biodiesel provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports biodiesel by means of a transport truck, a railroad tank car, a tank wagon, or a marine vessel.

(5) Blended fuel. – A mixture composed of gasoline or diesel fuel and another liquid, other than an additive, that can be used as a fuel in a highway vehicle.

(6) Blender. – A person who produces blended fuel outside the terminal transfer system.

(7) Bonded importer. – A person, other than a supplier, who imports by transport truck or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in one or more of the following circumstances:

a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal of the fuel at that state's rate or the rate of the destination state.

b. The supplier of the fuel is not an elective supplier.

c. The supplier of the fuel is not a permissive supplier.

(8) Bulk end-user. – A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(9) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(9a) Bulk storage. – A container or tank used to store bulk purchase of motor fuel or alternative fuel of 42 gallons or more.

(10) Code. – Defined in G.S. 105-228.90.

(11) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(12) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The term does not include jet fuel.

(13) Distributor. – A person who does one or more of the activities listed in this subdivision. The term does not include a person who sells motor fuel only at retail.

a. Produces, refines, blends, compounds, or manufactures motor fuel.

b. Transports motor fuel into a state or exports motor fuel out of a state.

c. Engages in the distribution of motor fuel primarily by tank car or tank truck or both.

d. Operates a bulk plant where the person has active motor fuel bulk storage.

(14) Diversion. – The movement of motor fuel to a state other than the destination state indicated on the original bill of lading.

(15) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements as set out in 26 C.F.R. § 48.4082.1.

(16) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(17) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.

(18) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or

for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(19) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.

(20) Fuel alcohol provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of fuel alcohol per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports fuel alcohol by means of a transport truck, a railroad tank car, a tank wagon, or a marine vessel.

(21) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.

(22) Gasoline. – Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method. The term does not include aviation gasoline.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene, listed in Treasury Regulation Section 48-4081-1(c)(3) as of January 1, 2017, that can be blended for use in a motor fuel.

c. Gasohol.

d. Fuel alcohol.

(23) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(24) Highway. – Defined in G.S. 20-4.01(13).

(25) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

(26) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(27) In-State supplier. – Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(28) Jet fuel. – Kerosene that meets all of the following requirements:

a. Has a maximum distillation temperature of 400 degrees Fahrenheit at the ten percent (10%) recovery point and a final maximum boiling point of 572 degrees Fahrenheit.

b. Meets American Society Testing Materials Specification D 1655 and Military Specifications MIL-T-5624P and MIL-T-83133D, Grades JP-5 and JP-8.

(29) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted under G.S. 119-26 by the Gasoline and Oil Inspection Board.

(30) Marine vessel. – A ship, boat, or other watercraft used or capable of being used to move in or through a waterway.

(31) Motor fuel. – Gasoline, diesel fuel, and blended fuel.

(32) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.

(33) Motor fuel transporter. – A person who transports motor fuel by pipeline, transport truck, railroad tank car, or marine vessel.

(34) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(35) Occasional importer. – One or more of the following that imports motor fuel by any means outside the terminal transfer system:

a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.

b. A bulk end-user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.

c. A distributor that imports motor fuel for use in a race car.

(36) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

(37) Person. – Defined in G.S. 105-228.90.

(38) Pipeline. – A fuel distribution system that moves motor fuel, in bulk, through a pipe either from a refinery to a terminal or from a terminal to another terminal.

(39) Position holder. – The person who holds the inventory position on the motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position on the motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(40) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

(41) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.

(42) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

(43) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(44) Retailer. – A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

(45) Secretary. – Defined in G.S. 105-228.90.

(46) Supplier. – Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.

b. A fuel alcohol provider.

c. A biodiesel provider.

d. Repealed by Session Laws 2017-39, s. 12, effective June 21, 2017.

(47) System transfer. – A transfer of motor fuel within the terminal transfer system.

(48) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor fuel.

(49) Tank wagon importer. – A person who imports only by means of a tank wagon motor fuel that is removed from a terminal or a bulk plant located in another state.

(50) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

(51) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel, jet fuel, or aviation gasoline may be removed at a rack.

(52) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.

(53) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.

(54) Transmix. – Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

(55) Transport truck. – A tractor trailer designed or used to transport loads of motor fuel over a highway.

(56) Trustee. – A person who is licensed as a supplier and who receives tax payments from and on behalf of a licensed distributor or licensed importer for remittance to the Secretary.

(57) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(58) User. – A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at least 10,001 pounds and who does not maintain storage facilities for motor fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 1, 2; 1998-146, s. 3; 2000-173, ss. 13(a), 14(a); 2001-414, s. 27; 2002-108, ss. 5, 6; 2003-349, s. 10.2; 2004-170, s. 27; 2006-162, s. 14(a); 2008-134, s. 24; 2017-39, s. 12.)

§ 105-449.61. Tax restrictions; administration.

(a) No Local Tax. – A county or city may not impose a tax on the sale, distribution, or use of motor fuel, 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) No Double Tax. – The tax imposed by this Chapter applies only once on the same motor fuel.

(c) Administration. – Article 9 of this Chapter applies to this Article. (1995, c. 390, s. 3; 2014-3, s. 9.6.)

§ 105-449.62. Nature of tax.

This Article imposes a tax on motor fuel to provide revenue for the State's transportation needs and for the other purposes listed in Part 7 of this Article. The tax is collected from the supplier or importer of the fuel because this method is the most efficient way to collect the tax. The tax is designed, however, to be paid ultimately by the person who consumes the fuel. The tax becomes a part of the cost of the fuel and is consequently paid by those who subsequently purchase and consume the fuel. (1997-60, s. 1.)

§ 105-449.63. Reserved for future codification purposes.

§ 105-449.64. Reserved for future codification purposes.

Part 2. Licensing.

§ 105-449.65. List of persons who must have a license.

(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A refiner.
(2) A supplier.
(3) A terminal operator.
(4) An importer.
(5) An exporter.
(6) A blender.
(7) A motor fuel transporter who transports motor fuel for hire.
(8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.
(9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.
(10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless one of the following subdivisions provides otherwise.

(1) Supplier. – A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as a supplier is considered to have a license as a blender.

(2) Importer. – A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State.

(3) Distributor. – A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 3; 1997-60, s. 2; 1999-438, ss. 20, 21; 2003-349, s. 10.3; 2005-435, s. 9; 2006-162, s. 13(a); 2008-134, s. 25; 2017-39, s. 13.)

§ 105-449.66. Importer licensing.

An applicant for a license as an importer must indicate on the application the type of importer license sought. The types of importers are bonded importer, occasional importer, and tank wagon importer.

A person may not be licensed as more than one type of importer. A bulk end-user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A bulk end-user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A bulk end-user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 4; 1997-60, s. 3; 2008-134, s. 26.)

§ 105-449.67. List of persons who may obtain a license.

A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:

(1) A distributor who is not required to be licensed under G.S. 105-449.65.

(2) A permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 5; 1997-60, s. 4; 2003-349, s. 10.4.)

§ 105-449.68. Restrictions on who can get a license as a distributor.

A bulk end-user of motor fuel may not be licensed as a distributor unless the bulk end-user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk end-user on January 1, 1996, is subsequently revoked or cancelled, the bulk end-user is subject to the restriction set in this section. (1995, c. 390, s. 3; 2000-173, s. 14(b); 2008-134, s. 27; 2017-204, s. 4.5(a).)

§ 105-449.69. How to apply for a license.

(a) General. – To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary.

(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, or a blender must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section.

(d) Import Activity. – An applicant for a license as an importer or as a distributor must list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

(e) Export Activity. – An applicant for a license as an exporter or as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 6; 2003-349, s. 10.5; 2005-435, s. 10; 2008-134, s. 28; 2017-39, s. 14.)

§ 105-449.70. Supplier election to collect tax on out-of-state removals.

(a) Election. – An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an in-State supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary. A

supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) Effect. – A supplier that makes the election allowed by this section agrees to all of the following with respect to motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state:

(1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.

(2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.

(3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.

(4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred.

(c) Limited Jurisdiction. – A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 7, 8; 2008-134, s. 29.)

§ 105-449.71. Permissive supplier election to collect tax on out-of-state removals.

(a) Election. – An out-of-state supplier that is not required to have a license under this Part may elect to have a license and thereby become a permissive supplier. An out-of-state supplier that does not make this election may not act as a permissive supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) Effect. – By obtaining a license as a permissive supplier, the permissive supplier agrees to be subject to the same requirements as a supplier and to all of the following with respect to motor fuel that is removed by the permissive supplier at a terminal located in another state and has this State as its destination state:

(1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.

(2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.

(3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.

(4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred.

(c) Limited Jurisdiction. – A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the

General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 9.)

§ 105-449.72. Bond or letter of credit required as a condition of obtaining and keeping certain licenses or of applying for certain refunds.

(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

(1) For an applicant for a license as any of the following, the amount is two million dollars ($2,000,000):
  a. A refiner.
  b. A terminal operator.
  c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
  d. A bonded importer.
  e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars ($2,000) and may not be more than five hundred thousand dollars ($500,000):
  a. Repealed by Session Laws 2007-527, s. 17(a), effective October 1, 2007.
  b. An occasional importer.
  c. A tank wagon importer.
  d. A distributor.
  e. Repealed by Session Laws 1997-60, s. 5, effective October 5, 1997.

(3) For an applicant for a license as any of the following, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars ($2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.
  a. A blender.
  b. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.

(b) Multiple Activity. – An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under all the activities. A bond for these

combined activities may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

(c) Adjustment to Bond. – When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the licensee, however, may not exceed the limits set in subdivision (a)(2) of this section.

(d) Replacements. – When a licensee files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

(1) Return the previously filed bond or letter of credit.
(2) Notify the person liable on the previously filed bond that the person is released from liability on the bond.

(e) Credit Card Companies. – The Secretary may require a credit card company to file with the Secretary a bond if the company applies for a refund under G.S. 105-449.105(a) and the Secretary determines after an audit that a bond is needed to protect the State from loss in collecting any additional tax due pursuant to the audit. The bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of a bond required under this subsection is two times the average monthly refund due, subject to the minimum and maximum amounts provided in subdivision (a)(2) of this section.

(f) Exemption. – The requirement to obtain a bond or an irrevocable letter of credit does not apply to a distributor, an importer, or a motor fuel transporter who supplies motor fuel when the market for motor fuel is disrupted and emergency supplies are needed, as identified by an executive order of the Governor. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 10; 1997-60, s. 5; 1998-146, s. 4; 2001-205, s. 5; 2002-108, ss. 7, 8; 2003-349, s. 10.6; 2004-170, s. 28; 2007-527, s. 17(a); 2009-445, s. 33; 2017-204, s. 4.5(b).)

§ 105-449.73. Denial of license application.

The Secretary may refuse to issue a license to an applicant that has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter revoked by the Secretary.
(1a) Had a motor fuel license or registration issued by another state revoked.
(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.
(3) Been convicted of fraud or misrepresentation.
(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 11; 2003-349, s. 10.7; 2005-435, s. 11; 2017-204, s. 4.5(c).)

§ 105-449.74. Issuance of license.

Upon approval of an application, the Secretary must issue a license to the applicant. A supplier's license must indicate the category of the supplier. An importer's license must indicate the category of the importer. A licensee must maintain and display a copy of the license issued under this Part in a conspicuous place at each place of business of the licensee. A license is not transferable and remains in effect until revoked or cancelled. (1995, c. 390, s. 3; 2004-170, s. 29; 2008-134, s. 30; 2017-204, s. 4.5(d).)

§ 105-449.75. Licensee must notify the Secretary of discontinuance of business.

A licensee that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license to the Secretary. The notice must give the date the change takes effect and, if the licensee has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

The licensee is responsible for all taxes for which the licensee is liable under this Article but are not yet due. If the licensee has transferred the business to another and does not give the notice required by this section, the person to whom the licensee has transferred the business is liable for the amount of any tax the licensee owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the licensee. (1995, c. 390, s. 3; 2008-134, s. 31; 2017-204, s. 4.5(e).)

§ 105-449.76. Cancellation or revocation of license.

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the licensee. The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the acts listed in G.S. 105-449.120 after holding a hearing on whether the license should be revoked.

(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by registered mail to the last known address of the licensee.

(c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the licensee:

(1) Return an irrevocable letter of credit to the licensee.

(2) Return a bond to the licensee or notify the person liable on the bond and the licensee that the person is released from liability on the bond. (1995, c. 390, s. 3; 2017-204, s. 4.5(f).)

§ 105-449.77. Records and lists of license applicants and license holders.

(a) Records. – The Secretary must keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons that hold a current license issued under this Article, by license category.

(b) Lists. – The Secretary must annually give a list to each licensee of all the licensees under this Article. The list must state the name, account number, and business address of each licensee on the list. The Secretary must send a monthly update of the list to each licensed refiner or licensed supplier and to any other licensee that requests a copy of the list.

(c) Repealed by Session Laws 2002-108, s. 9, effective January 1, 2003. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 12; 1997-60, s. 6; 2002-108, s. 9; 2017-204, s. 4.5(g).)

§ 105-449.78. Reserved for future codification purposes.

§ 105-449.79. Reserved for future codification purposes.

Part 3. Tax and Liability.

§ 105-449.80. Tax rate.

(a) Rate. – For the period that begins on January 1, 2016, and ends on June 30, 2016, the motor fuel excise tax rate is a flat rate of thirty-five cents (35¢) per gallon. For the period that begins on July 1, 2016, and ends on December 31, 2016, the motor fuel excise tax rate is a flat rate of thirty-four cents (34¢) per gallon. For the calendar years beginning on January 1, 2017, the motor fuel excise tax rate is a flat rate of thirty-four cents (34¢) per gallon, multiplied by a percentage. For calendar years beginning on or after January 1, 2018, the motor fuel excise tax rate is the amount for the preceding calendar year, multiplied by a percentage. The percentage is one hundred percent (100%) plus or minus the sum of the following:

(1) The percentage change in population for the applicable calendar year, as estimated under G.S. 143C-2-2, multiplied by seventy-five percent (75%).

(2) The annual percentage change in the Consumer Price Index for All Urban Consumers, multiplied by twenty-five percent (25%). For purposes of this subdivision, "Consumer Price Index for All Urban Consumers" means the

United States city average for energy index contained in the detailed report released in the October prior to the applicable calendar year by the Bureau of Labor Statistics of the United States Department of Labor, or data determined by the Secretary to be equivalent.

(b) Repealed by Session Laws 2015-2, s. 2.2(a), effective January 1, 2016.

(c) Notification. – The Secretary must notify affected taxpayers of the tax rate to be in effect for each calendar year beginning January 1. (1995, c. 390, s. 3; 2015-2, s. 2.2(a); 2018-5, s. 38.6(f).)

§ 105-449.81. Excise tax on motor fuel.

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(3b) Fuel grade ethanol or biodiesel fuel if the fuel meets at least one of the following descriptions:

a. Is produced in this State and is removed from the storage facility at the production location.

b. Is imported to this State by means of a transport truck, a railroad tank car, a tank wagon, or a marine vessel where ethanol or biodiesel from the vessel is not delivered to a terminal that has been assigned a terminal control number by the Internal Revenue Service.

c. Repealed by Session Laws 2009-445, s. 34(a), effective January 1, 2010.

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and is subject, upon transfer, to the federal excise tax imposed by section 4081 of the Code or is transferred to a person who is not licensed under this Article as a supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 13; 2004-170, s. 30; 2007-527, s. 38(a); 2008-134, s. 32; 2009-445, s. 34(a); 2014-3, s. 9.7(a); 2017-39, s. 15; 2017-204, s. 6.3(a).)

§ 105-449.82. Liability for tax on removals from a refinery or terminal.

(a) Refinery Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed from a refinery in this State is payable by the refiner.

(b) Terminal System Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed by a system transfer from a terminal in this State is payable by the position holder for the fuel. If the position holder is not the terminal operator, the terminal operator is jointly and severally liable for the tax.

(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. A supplier who sells motor fuel to a unlicensed exporter is jointly and severally liable for the tax due on the fuel at the motor fuel rate. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 14; 1997-60, s. 7; 2008-134, s. 33.)

§ 105-449.83. Liability for tax on imports.

(a) By System Transfer. – The excise tax imposed by G.S. 105-449.81(2) on motor fuel imported by a system transfer to a refinery is payable by the refiner. The excise tax imposed by that subdivision on motor fuel imported by a system transfer to a terminal is payable by the person importing the fuel and by the terminal operator, both of which are jointly and severally liable for payment of the tax due on the fuel.

(b) From Out-of-State Terminal. – The excise tax imposed by G.S. 105-449.81(3) on motor fuel that is removed from a terminal rack located in another state and has this State as its destination state is payable by the importer of the fuel as follows:

(1) If the importer of the fuel is a licensed supplier in this State and the fuel is removed for the supplier's own account for use in this State, the tax is payable by the supplier.

(2) If the supplier of the fuel is licensed in this State as an elective supplier or a permissive supplier, the tax is payable to the supplier as trustee.

(3) If no other subdivision of this subsection applies, the tax is payable by the importer when filing a return with the Secretary.

(c) From Out-of-State Bulk Plant. – The excise tax imposed by G.S. 105-449.81(3) on motor fuel that is removed from a bulk plant located in another state is payable by the person that imports the fuel. (1995, c. 390, s. 3.)

§ 105-449.83A. Liability for tax on fuel grade ethanol and biodiesel.

The excise tax imposed by G.S. 105-449.81(3b) on fuel grade ethanol is payable by the refiner or fuel alcohol provider. The excise tax imposed by G.S. 105-449.81(3b) on biodiesel is payable by the refiner or the biodiesel provider. (1995 (Reg. Sess., 1996), c. 647, s. 15; 2008-134, s. 34; 2009-445, s. 34(b); 2014-3, s. 9.7(b).)

§ 105-449.84. Liability for tax on blended fuel.

(a) On Blender. – The excise tax imposed by G.S. 105-449.81(4) on blended fuel made in this State is payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

(b) On Importer. – The excise tax imposed by G.S. 105-449.81(4) on blended fuel imported to this State is payable by the importer.

(c) Blends Made at Terminal. – The following blended fuel is considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

(1) An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon.

(2) A kerosene splash-blend made when kerosene is delivered at a terminal into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered at that terminal into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend. (1995, c. 390, s. 3.)

§ 105-449.84A. Liability for tax on behind-the-rack transfers.

The excise tax imposed by G.S. 105-449.81(5) on motor fuel that is transferred within the terminal transfer system and is subject to the federal excise tax is payable by the supplier of the fuel, the person receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred, all of whom are jointly and severally liable for the tax. The excise tax imposed by that subdivision on motor fuel that is transferred within the terminal transfer system by a person that is not licensed under this Article as a supplier is payable by the person transferring the motor fuel, the person receiving the motor fuel, and the terminal operation of the terminal at which the fuel was transferred, all of whom are jointly and severally liable for the tax. (1995 (Reg. Sess., 1996), c. 647, s. 17; 2008-134, s. 35.)

§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.

(a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational

return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted for motor fuel. A terminal operator may establish that it can account for motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal if the motor fuel was lost or part of a transmix. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 18; 2008-134, s. 36.)

§ 105-449.86. Tax on and liability for dyed diesel fuel used to operate certain highway vehicles.

(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1, 2004.

(2) A local bus that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

(4) Repealed by Session Laws 2005-435, s. 12, effective September 27, 2005.

(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a bulk end-user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section. (1995, c. 390, s. 3; 2003-349, s. 10.8; 2005-435, s. 12; 2008-134, s. 37.)

§ 105-449.87. Backup tax and liability for the tax.

(a) Tax. – An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code.

(2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.

(3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.

(4) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 19.

(5) Motor fuel that, based on its shipping document, is destined for delivery to another state and is then diverted and delivered in this State.

(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end-seller of motor fuel taxable under this

section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end-seller is jointly and severally liable for the tax. If the Secretary determines that a bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An end-seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end-seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123.

(c) Diverted Fuel. – The person who authorizes a change in the destination state of motor fuel from the state given on the fuel's shipping document to North Carolina is liable for the tax due on the motor fuel. If motor fuel is diverted from North Carolina to another state, only the person who authorized the fuel to be diverted is eligible for a refund of the amount of tax paid on the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 19; 1997-60, s. 8; 1998-146, s. 5; 1999-438, s. 22; 2002-108, s. 10; 2008-134, s. 38.)

§ 105-449.88. Exemptions from the excise tax.

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the motor fuel is removed by a licensed distributor or a licensed exporter and the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(1a) Motor fuel removed by transport truck from a terminal for export if the motor fuel is removed by a licensed distributor or licensed exporter, the supplier that is the position holder for the motor fuel sells the motor fuel to another supplier as the motor fuel crosses the terminal rack, the purchasing supplier or its customer receives the motor fuel at the terminal rack for export, and the supplier that is the position holder collects tax on the motor fuel at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government for its use.

(3) Motor fuel sold to the State for its use.

(4) Motor fuel sold to a local board of education for use in the public school system.

(5) Diesel that is kerosene and is sold to an airport.

(6) Motor fuel sold to a charter school for use for charter school purposes.

(7) Motor fuel sold to a community college for use for community college purposes.

(8) Motor fuel sold to a county or a municipal corporation for its use.

(9) Biodiesel that is produced by an individual for use in a private passenger vehicle registered in that individual's name pursuant to Chapter 20 of the General Statutes. For the purposes of this subdivision, the term "private passenger vehicle" has the same meaning as in G.S. 20-4.01.

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

(11) Motor fuel sold to a joint agency created by interlocal agreement pursuant to G.S. 160A-462 to provide fire protection, emergency services, or police protection. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 20, 21;

1998-98, s. 28; 1998-146, s. 6; 2000-72, s. 2; 2000-173, ss. 13(b), 15; 2001-427, s. 9(a); 2002-108, s. 11; 2007-524, s. 1; 2016-5, s. 5.3(d); 2018-39, s. 1.)

§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.

(a) Repealed by Session Laws 2006-162, s. 14(b), effective January 1, 2007, and applicable to motor fuel purchased on or after that date.

(b) Exempt Card or Code. – An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or code is issued is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel. (1997-60, s. 9; 2001-205, s. 4; 2006-162, s. 14(b).)

§ 105-449.89. Restrictions on removal of motor fuel from terminal.

(a) By Bulk End-User. – An out-of-state bulk end-user may not remove motor fuel from a terminal in this State for use in the state in which the bulk end-user is located unless the bulk end-user is licensed under this Article as an exporter. An out-of-state bulk end-user that is not licensed under this Article may remove motor fuel from a bulk plant in this State.

(b) To Marine Vessel. – A supplier may not transfer motor fuel from a terminal to a marine vessel unless the person to whom the supplier transfers the motor fuel is licensed as a supplier. (1995 (Reg. Sess., 1996), c. 647, s. 22; 1997-60, s. 10; 2008-134, s. 39.)

Part 4. Payment and Reporting.

§ 105-449.90. When tax return and payment are due.

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due annually or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd

of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

(c) Repealed by Session Laws 2006-162, s. 14(c), effective January 1, 2007, and applicable to motor fuel purchased on or after that date.

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.
(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11; 2006-162, s. 14(c).)

§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination state. Payments of destination state tax are due to the destination state on the date set by the law of the destination state. (1995 (Reg. Sess., 1996), c. 647, s. 24; 2005-435, s. 13.)

§ 105-449.91. Remittance of tax to supplier.

(a) Distributor. – A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. – A licensed exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when a licensed exporter must remit tax to a supplier is governed by the law of the destination state of the exported motor fuel.

(c) Importer. – A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has

the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. – A person who removes motor fuel at a terminal rack and is not subject to another subsection in this section must remit tax due on the motor fuel to the supplier of the fuel. The time the person must remit tax to a supplier is governed by the terms of the contract between the supplier and the person.

The method by which a person must remit tax to a supplier under this section is governed by the terms of the contract between the supplier and that person. G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 25; 1997-60, s. 12; 2008-134, s. 40.)

§ 105-449.92. Notice to suppliers of cancellation, revocation, or reissuance of certain licenses; effect of notice.

(a) Notice to Suppliers. – If the Secretary cancels or revokes a distributor's license, an exporter's license, or an importer's license, the Secretary must notify all suppliers of the cancellation or revocation. If the Secretary issues a license to a distributor, an exporter, or an importer whose license was cancelled or revoked, the Secretary must notify all suppliers of the issuance.

(b) Effect of Notice. – A supplier that sells motor fuel to a distributor after receiving notice from the Secretary that the Secretary has cancelled or revoked the distributor's license is jointly and severally liable with the distributor for any tax due on motor fuel the supplier sells to the distributor after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor after the supplier receives notice from the Secretary that the Secretary has issued another license to the distributor. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 26; 1997-60, s. 13; 2017-204, s. 4.5(h).)

§ 105-449.93. Percentage discount for licensed distributors and some licensed importers.

(a) Repealed by Session Laws 2006-162, s. 14(d), effective January 1, 2007, and applicable to motor fuel purchased on or after that date.

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 27; 2006-162, s. 14(d).)

§ 105-449.94: Repealed by Session Laws 2006-162, s. 14(e), effective January 1, 2007, and applicable to motor fuels purchased on or after that date.

§ 105-449.95: Recodified as G.S. 105-449.105B by Session Laws 2009-445, s. 35(a), effective January 1, 2010.

§ 105-449.96. Information required on return filed by supplier.

A return of a supplier must list all of the following information and any other information required by the Secretary:

(1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel.

(2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel.

(3) The number of gallons of motor fuel removed during the month for export, sorted by type of fuel.

(4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of fuel.

(5) The number of gallons of motor fuel the supplier sold during the month to a governmental unit whose use of fuel is exempt from tax, sorted by type of fuel.

(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers.

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 30; 1997-60, s. 14; 2005-435, s. 14; 2008-134, s. 41.)

§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.

(a) Taxes Not Remitted. – When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax any of the following licensees owes the supplier but failed to remit to the supplier:

(1) A licensed distributor.

(2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.

(3) Repealed by Session Laws 1995, c. 647, s. 32.

A supplier is not liable for tax a licensee listed in this subsection owes the supplier but fails to pay. If a listed licensee pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the payment to the Secretary.

(b) Administrative Discount. – A supplier that files a timely return and sends a timely payment may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed eight thousand dollars ($8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel.

(c) Percentage Discount. – A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk end-user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier.

(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or code to a person that enables the person to buy motor fuel without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt card or code. The amount of excise tax imposed on fuel purchased with an exempt card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 31, 32; 1997-60, s. 15; 1999-438, s. 23; 2000-173, s. 14(c); 2006-162, s. 14(f); 2008-134, s. 42; 2017-204, s. 4.5(i).)

§ 105-449.98. Duties of supplier concerning payments by distributors, exporters, and importers.

(a) As Fiduciary. – A supplier has a fiduciary duty to remit to the Secretary the amount of tax paid to the supplier by a licensed distributor, licensed exporter, or licensed importer. A supplier is liable for taxes paid to the supplier by a licensed distributor, licensed exporter, or licensed importer.

(b) Notice of Fuel Received. – A supplier must notify a licensed distributor, a licensed exporter, or a licensed importer that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the licensee must remit to the supplier the amount of tax due on the fuel.

(c) Notice to Department. – A supplier of motor fuel at a terminal must notify the Department within 10 business days after a return is due of any licensed distributors, licensed exporters, or licensed importers that did not pay the tax due the supplier when the supplier filed the return. The notice must be transmitted to the Department in the form required by the Department.

(d) Payment Application. – A supplier that receives a payment of tax from a licensed distributor, a licensed exporter, or a licensed importer may not apply the payment to a debt that person owes the supplier for motor fuel purchased from the supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 33; 1997-60, s. 16; 2017-204, s. 4.5(j).)

§ 105-449.99. Returns and discounts of importers.

(a) Return. – A monthly return of a bonded importer, an occasional importer, or a tank wagon importer must contain the following information concerning motor fuel imported during the period covered by the return:

(1) The number of gallons of imported motor fuel acquired from a supplier that collected the excise tax due this State on the fuel.

(2) The number of gallons of imported motor fuel acquired from a supplier that did not collect the excise tax due this State on the fuel, listed by source state, supplier, and terminal.

(3) The import authorization number of each import that is reported under subdivision (2) of this subsection and was removed from a terminal.

(4) For an occasional importer or a tank wagon importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

(b) Discounts. – An importer may not deduct an administrative discount from the amount remitted with a return. An importer that imports motor fuel received from an elective supplier or a permissive supplier may deduct the percentage discount allowed by G.S. 105-449.93(b) when remitting tax to the supplier, as trustee, for payment to the State. An importer that imports motor fuel received from a supplier that is not an elective supplier or a permissive supplier may not deduct the percentage discount allowed by G.S. 105-449.93(b) when filing a return for the tax due. (1995, c. 390, s. 3.)

§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.

(a) Requirement. – A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. A terminal operator must report all motor fuel removed from an out-of-state terminal that has this State as its destination state.

(b) Content. – The return is due on the date a monthly return is due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel, sorted by type of fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel, sorted by type of fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

(4) The number of gallons of motor fuel in inventory at the beginning of each month and at the end of each month.

(c) Due Date. – The return is due on the date a monthly return is due under G.S. 105-449.90. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 34; 2006-162, s. 15(a); 2008-134, s. 43.)

§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of motor fuel.

(a) Requirement. – A motor fuel transporter that is required to be licensed under this Article must file a monthly informational return with the Secretary that shows motor fuel transported in this State by the transporter during the month.

(b) Content. – The return required by this section must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel

received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the date a monthly return is due under G.S. 105-449.90. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 35; 2002-108, s. 12; 2006-162, ss. 13(b), 15(b); 2008-134, s. 44.)

§ 105-449.102. Distributor to file return showing exports from a bulk plant.

(a) Requirement. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel exported during the month.

(2) The destination state of the motor fuel exported during the month.

(3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel.

(c) Due Date. – The return is due on the date a monthly return is due under G.S. 105-449.90. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 36; 2006-162, s. 15(c); 2008-134, s. 45.)

§ 105-449.103. Reserved for future codification purposes.

§ 105-449.104. Use of name and account number on return.

When a transaction with a person licensed under this Article is required to be reported on a return, the return must state the licensee's name and the account number used by the Department to identify the licensee. The name of a licensee and the licensee's account number is stated on the lists compiled under G.S. 105-449.77. (1995 (Reg. Sess., 1996), c. 647, s. 37; 2017-204, s. 4.5(k).)

Part 5. Refunds.

§ 105-449.105. Monthly refunds for tax paid on exempt fuel, lost fuel, and accidental mixes that result in fuel unsuitable for highway use.

(a) Exempt Fuel. – An entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the entity pays on its motor fuel. A person

who sells motor fuel to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the person pays on motor fuel it sells to the entity. A credit card company that issues a credit card to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the company pays on motor fuel the entity purchases using the credit card.

A person may obtain a monthly refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary. An out-of-state bulk end-user is not allowed a refund on fuel exported from a bulk plant unless the bulk end-user is licensed as an exporter.

(b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a monthly refund for the tax paid on the fuel.

(c) Accidental Mixes. – A person that accidentally combines any of the following may obtain a monthly refund for the amount of tax paid on the fuel:

(1) Dyed diesel fuel with tax-paid motor fuel.
(2) Gasoline with diesel fuel.
(3) Undyed diesel fuel with dyed kerosene.

(d) Repealed by Session Laws 1998-98, s. 29.

(e) Refund Amount. – The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93. (1995, c. 390, s. 3; c. 523, ss. 32.1, 32.2; 1995 (Reg. Sess., 1996), c. 647, s. 38; 1997-6, s. 12; 1997-60, s. 17; 1998-98, s. 29; 2000-173, s. 16; 2001-205, s. 3; 2008-134, s. 46.)

§ 105-449.105A. Monthly refunds for kerosene.

(a) Refund for Undyed Kerosene Sold to an End User for Non-Highway Use. – A distributor who sells kerosene to an end user for one of the purposes listed in this subsection may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of those purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable.

(1) Heating.
(2) Drying crops.
(3) A manufacturing process.

(b) Liability. – If the Secretary determines that the Department overpaid a distributor by refunding more tax to the distributor than is due under this section, the distributor is liable for the amount of the overpayment. (1998-146, s. 8; 2000-173, s. 17; 2001-205, s. 6; 2006-162, s. 14(g); 2008-134, ss. 47, 48; 2010-95, s. 29(a).)

§ 105-449.105B. Monthly hold harmless refunds for licensed distributors and some licensed importers.

If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier during a month and the discount the distributor or importer receives under G.S. 105-449.93(b) on the motor fuel is less than the amount the distributor or importer would have received during that month if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier under the following schedule, the distributor or importer is allowed a monthly refund of the difference:

Amount of Gasoline Purchased Each Month	Percentage Discount
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for motor fuel purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 29; 1997-6, s. 11; 2009-445, s. 35(a); 2010-95, s. 30.)

§ 105-449.106. Quarterly refunds for nonprofit organizations, taxicabs, and special mobile equipment.

(a) Nonprofits. – A nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the tax rate in effect under G.S. 105-449.80 for the time period for which the refund is claimed, less one cent (1¢) per gallon.

An application for a refund allowed under this subsection must be made in accordance with this Part and must be signed by the chief executive officer of the organization. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

Any of the following entities may receive a refund under this subsection:

(1) Repealed by Session Laws 2002-108, s. 13, effective January 1, 2003.
(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
(3) A volunteer fire department.
(4) A volunteer rescue squad.
(5) A sheltered workshop recognized by the Department of Health and Human Services.

(b) **(Repealed effective for taxable years beginning on or after January 1, 2015)** Taxi. – A person who purchases and uses motor fuel in a taxicab while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the excise tax paid during the

preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. For purposes of this subsection, the term "taxicab" means a motor vehicle that seats no more than nine passengers, transports passengers for hire, operates on call or demand, and accepts and solicits passengers indiscriminately. An application for a refund must be made in accordance with this Part.

(c) Special Mobile Equipment. – A person who purchases and uses motor fuel for the off-highway operation of special mobile equipment registered under Chapter 20 of the General Statutes may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the tax rate in effect under G.S. 105-449.80 for the time period for which the refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part. (1995, c. 390, s. 3; 1997-6, s. 13; 1997-443, s. 11A.118(a); 1999-438, s. 24; 2002-108, s. 13; 2005-435, s. 15; 2006-162, s. 16(a); 2010-95, s. 31(a), (b); 2014-3, s. 9.10(a); 2014-100, s. 34.6(a); 2016-5, s. 4.10(b).)

§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the tax rate in effect under G.S. 105-449.80 for the time period less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environmental Quality under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the tax rate in effect under G.S. 105-449.80 for the time period for which the refund is claimed less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of Subchapter I of this Chapter determines the amount of State sales and use tax to be deducted under this section from a motor fuel excise tax refund. Articles 39, 40, and 42 of Subchapter VIII of this Chapter and the Mecklenburg First 1% Sales Tax Act determine the amount of local sales and use tax to be deducted under this section from a motor fuel excise tax refund. The cents-per-gallon cost of motor fuel used to calculate the amount of State and local sales and use tax deducted from a claim for refund for each taxable period equals the average of the United States city average price of finished motor gasoline and No. 2 diesel fuel for resale in the "Consumer Price Index Detailed Reports" published by the Bureau of Labor Statistics of the United States Department of Labor or data determined by the Secretary to be equivalent. The average is computed by weighting the cost of finished motor gasoline and No. 2 diesel fuel by the proportion of tax collected on each under this Article for the taxable period, rounding to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon cost is exactly between two-tenths of a cent (2/10¢), the average is rounded up to the higher of the two. (1995, c. 390, s. 3; 1997-6, s. 14; 1997-423, s. 4; 2001-408, s. 1; 2005-377, s. 1; 2006-162, s. 16(b); 2014-3, s. 9.10(b); 2015-2, ss. 2.2(b), 2.3; 2015-6, s. 2.25; 2015-241, s. 14.30(u); 2016-5, ss. 4.9(a), 4.10(c).)

§ 105-449.108. When an application for a refund is due.

(a) Due Dates. – The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month

(b) Requirements. – An application for a refund allowed under this Part must be filed with the Secretary and be in the form required by the Secretary. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction. An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year.

(c) Repealed by Session Laws 1998-146, s. 10, effective September 18, 1998.

(d) Late Application. – A refund applied for more than three years after the date the application is due is barred. (1995, c. 390, s. 3; 1997-6, s. 15; 1998-146, s. 10; 1998-212, s. 29A.14(r); 2008-134, s. 49; 2010-95, s. 32.)

§ 105-449.109: Repealed by Session Laws 1998-212, s. 29A.14(s).

§ 105-449.110. Review of refund application and payment of refund.

(a) Decision. – Upon determining that an application for refund is correct, the Secretary must issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, the Secretary must send the applicant a proposed denial of the request for a refund. The provisions of Article 9 of this Chapter apply to the procedure for requesting a review of proposed denial of a refund sought under this Article.

(b) Interest. – The rate of interest payable on a refund is the rate set in G.S. 105-241.21. Interest accrues on a refund from the date that is 90 days after the later of the following:

(1) The date the application for refund was filed.

(2) The date the application for refund was due. (1995, c. 390, s. 3; 1998-98, s. 30; 2007-491, s. 44(1)a; 2017-204, s. 4.5(*l*).)

§ 105-449.111. Reserved for future codification purposes.

§ 105-449.112. Reserved for future codification purposes.

§ 105-449.113. Reserved for future codification purposes.

§ 105-449.114. Authority for agreement with Eastern Band of Cherokee Indians.

(a) By virtue of an Act of June 4, 1924, Pub. L. No. 68-191, Ch. 253, 43 Stat. 370, Congress and the United States courts have recognized the Eastern Band of Cherokee Indians as possessing sovereign legal rights over their members and their trust lands.

(b) The following definitions apply in this act:

(1) Chief. – The Principal Chief of the Eastern Band of the Cherokee Indians.

(2) Council. – The Tribal Council of the Eastern Band of the Cherokee Indians.

(3) Tribe. – The Eastern Band of the Cherokee Indians.

(c) Notwithstanding any other provision of law concerning refunds of motor fuels and alternative fuels taxes, the Department of Revenue may enter into a memorandum of understanding or an agreement with the Eastern Band of Cherokee Indians to make refunds of motor fuels and alternative fuels taxes to the Tribe in its collective capacity on behalf of its members who reside on or engage in otherwise taxable transactions within Cherokee trust lands. The memorandum or agreement shall be approved by the Council and signed by the Chief on behalf of the Tribe and shall be signed by the Secretary of Revenue on behalf of Department of Revenue. The memorandum or agreement may not affect the right of an individual member of the Tribe to a refund and shall provide for deduction of amounts refunded to individual members of the Tribe from the amounts to be refunded to the Tribe on behalf of all members. The memorandum or agreement may be effective for a definite or indefinite period, as specified in the agreement. (1989, c. 753, ss. 1-3; 1991, c. 193, s. 6; 2002-108, s. 14.)

Part 6. Enforcement and Administration.

§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.

(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A refiner, a terminal operator, a fuel alcohol provider, and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. – A shipping document is a permanent record that must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(1a) The type of motor fuel loaded.

(2) The date the motor fuel was loaded.

(3) The gross gallons loaded if the motor fuel is loaded onto a transport truck, and the gross pounds loaded if the motor fuel is loaded onto a railroad tank car.

(3a) The motor fuel transporter for the motor fuel.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(5) If the document is issued by a refiner or a terminal operator, the document must be machine printed. If the motor fuel is loaded onto a transport truck, the document must contain the following information:

a. The net gallons loaded.

b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A person who issues a shipping document may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary, in a manner designated by the Secretary, before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary, in a manner designated by the Secretary, a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) Sanctions Against Transporter. – The acts listed in this subsection are grounds for a civil penalty. The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed. The grounds for a civil penalty are:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion and received a confirmation number for the diversion before the imposition of the penalty.

(2) Tax was timely paid on the diverted fuel, unless the person is a motor fuel transporter.

(h) Sanctions. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a person who intentionally issues a shipping document that does not satisfy the requirements of subsection (b) of this section. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 39, 40; 2002-108, s. 15; 2003-349, s. 10.9; 2005-435, s. 16; 2007-527, ss. 16(b), 18(a); 2008-134, s. 50; 2009-445, s. 36(a); 2014-3, s. 9.9(a); 2017-39, s. 16.)

§ 105-449.115A. Shipping document required to transport fuel by tank wagon.

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person who operates a tank wagon into which motor fuel is loaded from some other source must have an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.
(2) The date the fuel was loaded.
(3) The type of fuel.
(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.
(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.
(3) Keep a copy of the invoice, bill of sale, or shipping document at a centralized place of business for at least three years from the date of delivery.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty. The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed. (2002-108, s. 16; 2005-435, s. 17; 2007-527, s. 16(c).)

§ 105-449.116. Repealed by Session Laws 1999-438, s. 25.

§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.

(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use motor fuel or alternative fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this Article or Article 36D of this Chapter and the tax imposed by Article 3 of Chapter 119 of the General Statutes have been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

(b) Civil Penalty. – The civil penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed.

(c) Enforcement. – The Secretary or a person designated by the Secretary may conduct investigations to identify violations of this Article. It is not a valid defense to a

violation of this Article that the State is exempt from the tax imposed by this Article. (1995, c. 390, s. 3; 1997-60, s. 19; 2003-349, s. 10.10; 2007-527, s. 16(d); 2008-134, s. 51.)

§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil penalty of two hundred fifty dollars ($250.00) per occurrence.

The penalty is payable to the agency that assessed the penalty. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed. (1995, c. 390, s. 3; 2002-108, s. 17; 2007-527, s. 16(e).)

§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars ($1,000). The penalty is payable to the agency that assessed the penalty. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container. (1995 (Reg. Sess., 1996), c. 647, s. 41; 2007-527, s. 16(f).)

§ 105-449.119. Review of civil penalty assessment.

A person who denies liability for a penalty imposed under this Part may request the Secretary to waive the penalty. The Secretary may reduce or waive a penalty as provided in Article 9 of this Chapter. (1995, c. 390, s. 3; 1999-337, s. 44; 2007-491, s. 41; 2014-3, s. 9.8(b).)

§ 105-449.120. Acts that are misdemeanors.

(a) Class 1. – A person who commits any of the following acts is guilty of a Class 1 misdemeanor:

(1) Fails to obtain a license required by this Article.
(2) Willfully fails to file a return required by this Article.
(3) Willfully fails to pay a tax when due under this Article or under former Article 36 or 36A of this Chapter. Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment.
(3a) Repealed by Session Laws 2006-162, s. 17, effective January 1, 2007, and applicable to motor fuel purchased on or after that date.
(4) Makes a false statement in an application, a return, or a statement required under this Article.
(5) Makes a false statement in an application for a refund.
(6) Fails to keep records as required under this Article.
(7) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books and records concerning motor fuel.

(8) Fails to disclose the correct amount of motor fuel sold or used in this State.
(9) Fails to file a replacement bond or an additional bond as required under this Article.
(10) Fails to show or give a shipping document as required under this Article.
(11) Willfully refuses to allow a licensed distributor, a licensed exporter, or a licensed importer to defer payment of tax to the supplier, as required by G.S. 105-449.91.
(12) Willfully refuses to allow a licensed distributor or a licensed importer to take the discount allowed by G.S. 105-449.93 when remitting tax to the supplier.

(b) Class 2. – A person who commits any of the following acts is guilty of a Class 2 misdemeanor:

(1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle.
(2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a highway vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 42; 1997-60, s. 20; 2006-162, s. 17.)

§ 105-449.121. Record-keeping requirements; inspection authority.

(a) What Must Be Kept. – A person who is subject to audit under subsection (b) of this section must keep a record of all shipping documents or other documents used to determine information the person provides in a return or to determine the person's motor fuel transactions. The records must be kept for three years from the due date of the return to which the records apply or, if the records apply to a transaction not required to be reported in a return, for three years from the date of the transaction.

(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit a person who is required to have or elects to have a license under this Article.
(2) Audit a distributor, a retailer, a bulk end-user, or a motor fuel user that is not licensed under this Article.
(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.
(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.
(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 43; 2000-173, s. 18; 2008-134, s. 52; 2009-445, s. 37.)

§ 105-449.122. Equipment requirements.

(a) Metered Pumps. – All motor fuel dispensed at retail must be dispensed from metered pumps that indicate the total amount of fuel measured through the pumps. Each pump must be marked to indicate the type of motor fuel dispensed.

(b) Truck Equipment. – A highway vehicle that transports diesel fuel in a tank that is separate from the fuel supply tank of the vehicle may not have a connection from the

transporting tank to the motor or to the supply tank of the vehicle. (1995, c. 390, s. 3; 1997-60, s. 21.)

§ 105-449.123. Marking requirements for dyed fuel storage facilities.

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle. A person who intentionally fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory held in the storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.

(1) The storage tank of the storage facility must be marked if the storage tank is visible.
(2) The fillcap or spill containment box of the storage facility must be marked.
(3) The dispensing device that serves the storage facility must be marked.
(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable. (1997-60, s. 22; 2001-205, s. 7; 2003-349, s. 10.11; 2004-170, s. 31; 2005-435, s. 18.)

§ 105-449.124. Reserved for future codification purposes.

Part 7. Use of Revenue.

§ 105-449.125. Distribution of tax revenue among various funds and accounts.

The Secretary shall allocate the amount of revenue collected under this Article from an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the fraction indicated:

Fund or Account	Amount
Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund	Nineteen thirty-seconds
Water and Air Quality Account	Five-sixteenths.

The Secretary shall allocate seventy-one percent (71%) of the remaining excise tax revenue collected under this Article to the Highway Fund and shall allocate twenty-nine percent (29%) to the Highway Trust Fund.

The Secretary shall charge a proportionate share of a refund allowed under this Article to each fund or account to which revenue collected under this Article is credited. The

Secretary shall credit revenue or charge refunds to the appropriate funds or accounts on a monthly basis. (1995, c. 390, s. 3; 2015-241, ss. 29.27B(a), (b).)

§ 105-449.125. (Effective July 1, 2016) Distribution of tax revenue among various funds and accounts.

(a) Distribution to Funds. – The Secretary shall allocate the amount of revenue collected under this Article from an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the percentages indicated:

Fund or Account	Amount
Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund	Sixty-two and one-half percent (62.5%)
Water and Air Quality Account	Twenty-eight and one-tenth percent (28.1%).

(b) Distribution of Remaining Revenue. – The Secretary shall allocate the remaining excise tax revenue collected under this Article, including any revenue that is allocated but not distributed under subsection (a) of this section, as follows:

(1) Seventy-one percent (71%) to the Highway Fund.

(2) Twenty-nine percent (29%) to the Highway Trust Fund.

(c) Accounting. – The Secretary shall charge a proportionate share of a refund allowed under this Article to each fund or account to which revenue collected under this Article is credited. The Secretary shall credit revenue or charge refunds to the appropriate funds or accounts on a monthly basis. (1995, c. 390, s. 3; 2015-241, ss. 29.27B(a), (b); 2016-5, ss. 4.11(a), (b); 2016-94, s. 14.3.)

§ 105-449.126. Distribution of part of Highway Fund allocation to Wildlife Resources Fund and Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

(a) The Secretary shall credit to the Wildlife Resources Fund one-sixth of one percent (1/6 of 1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125 and is from the excise tax on motor fuel. Revenue credited to the Wildlife Resources Fund under this section may be used only for the boating and water safety activities described in G.S. 75A-3(c). The Secretary must credit revenue to the Wildlife Resources Fund on a quarterly basis. The Secretary must make the distribution within 45 days of the end of each quarter.

(b) The Secretary shall credit to the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund one percent (1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125 and is from the excise tax on motor fuel. Revenue credited to the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund under this section may be used only for the dredging activities described in G.S. 143-215.73F. The Secretary shall credit revenue to the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund on a quarterly basis. The Secretary must make the distribution within

45 days of the end of each quarter. (1995, c. 390, s. 3; c. 507, s. 18.16; 2013-360, s. 14.22(g); 2014-100, s. 14.18(a); 2015-241, s. 29.4(a); 2016-94, s. 14.12(d).)

§ 105-449.127: Repealed by Session Laws 2006-162, s. 12(c), effective July 24, 2006.

§ 105-449.128. Reserved for future codification purposes.

§ 105-449.129. Reserved for future codification purposes.

Article 36D.

Alternative Fuel.

§ 105-449.130. Definitions.

The following definitions apply in this Article:

(1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.

(1a) Bulk end-user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

(1f) Diesel gallon equivalent of liquefied natural gas. – The energy equivalent of 6.06 pounds of liquefied natural gas.

(1g) Gas gallon equivalent of compressed natural gas. – The energy equivalent of 5.66 pounds of compressed natural gas.

(1h) Gas gallon equivalent of liquefied propane gas. – The energy equivalent of 5.75 pounds of liquefied propane gas.

(2) Highway. – Defined in G.S. 105-449.60.

(3) Highway vehicle. – Defined in G.S. 105-449.60.

(4) Motor fuel. – Defined in G.S. 105-449.60.

(5) Motor fuel rate. – Defined in G.S. 105-449.60.

(6) Provider of alternative fuel. – A person who does one or more of the following:

a. Acquires alternative fuel for sale or delivery to a bulk end-user or a retailer.

b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a bulk end-user or a retailer to operate a highway vehicle.

c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.

d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.

(7) Retailer. – A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a

highway vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 44; 2008-134, s. 53; 2014-4, s. 30(a), (b); 2015-224, s. 1.)

§ 105-449.131. List of persons who must have a license.

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A provider of alternative fuel.
(2) A bulk end-user.
(3) A retailer. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 45; 2008-134, s. 54.)

§ 105-449.132. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b). (1995, c. 390, s. 3; 1998-146, s. 11.)

§ 105-449.133. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.

(a) Who Must Have Bond. – The following applicants for a license must file with the Secretary a bond or an irrevocable letter of credit:

(1) An alternative fuel provider.
(2) A retailer or a bulk end-user that intends to store highway and nonhighway alternative fuel in the same storage facility.

(b) Amount. – The amount of the bond is the amount that would be required if the fuel the applicant intended to provide or store was motor fuel rather than alternative fuel. An applicant that is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond or irrevocable letter of credit under that section for the combined amount.

A bond filed under this subsection must be conditioned upon compliance with this Article, be payable to the State, and be in the form required by the Secretary. The Secretary may require a bond issued under this subsection to be adjusted in accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor of motor fuel. (1995, c. 390, s. 3; 1997-60, s. 23; 2008-134, s. 55.)

§ 105-449.134. Denial, revocation, or cancellation of license.

The Secretary may deny an application for a license or cancel or revoke a license under this Article for the same reasons that the Secretary may deny an application for a license or cancel or revoke a license under Article 36C of this Chapter. The procedure in Article 36C for revoking a license applies to the revocation of a license under this Article. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 46; 2017-204, s. 4.6(a).)

§ 105-449.135. Issuance of license; notification of changes.

(a) Issuance. – The Secretary must issue a license to each applicant whose application is approved. A license is not transferable and remains in effect until revoked or cancelled.

(b) Notice. – A licensee that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license. The notice must give the date the change takes effect and, if the licensee has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

All taxes for which the licensee is liable under this Article but are not yet due become due on the date of the change. If the licensee transfers the business to another and does not give the notice required by this section, the person to whom the business was transferred is liable for the amount of any tax the licensee owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the licensee. (1995, c. 390, s. 3; 2017-204, s. 4.6(b).)

§ 105-449.136. Tax on alternative fuel.

(a) Rate. – A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. The tax on liquefied natural gas is imposed on each diesel gallon equivalent of liquefied natural gas. The tax on liquefied propane gas is imposed on each gas gallon equivalent of liquefied propane gas. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The tax on compressed natural gas is imposed on each gas gallon equivalent of compressed natural gas. The Secretary must determine the equivalent rate for all other non-liquid alternative fuels.

(b) Administration. – The exemptions from the tax on motor fuel in G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 47; 2009-445, s. 38; 2014-4, s. 30(c); 2015-224, s. 2.)

§ 105-449.137. Liability for and payment of the tax.

(a) Liability. – A bulk end-user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a bulk end-user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article on all other alternative fuel.

(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary. (1995, c. 390, s. 3; 1997-60, s. 24; 2006-162, s. 15(d); 2008-134, s. 56.)

§ 105-449.138. Requirements for bulk end-users and retailers.

(a) Informational Return. – A bulk end-user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – A bulk end-user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a bulk end-user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 48; 1997-60, s. 25; 2008-134, s. 57.)

§ 105-449.139. Miscellaneous provisions.

(a) Records. – A licensee must keep a record of all documents used to determine the information provided in a return filed under this Article. The records must be kept for three years from the due date of the return to which the records apply. The records are open to inspection during business hours by the Secretary or a person designated by the Secretary.

(b) Violations. – The offenses listed in subdivisions (1) through (9) of G.S. 105-449.120 apply to this Article. In applying those offenses to this Article, references to "this Article" are to be construed as references to Article 36D and references to "motor fuel" are to be construed as references to alternative fuel.

(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to each licensed bulk end-user and licensed retailer. The Secretary must also give a list of licensed bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each licensee on the list. The Secretary must send an annual update of a list to each licensee, as appropriate. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 49; 2008-134, s. 58; 2017-204, s. 4.6(c).)

SUBCHAPTER VI. TAX RESEARCH.

Article 37.

Tax Research.

§§ 105-450 through 105-457: Repealed by Session Laws 1991, c. 10, s. 3.

SUBCHAPTER VII. PAYMENTS RECEIVED FROM TENNESSEE VALLEY AUTHORITY IN LIEU OF TAXES.

Article 38.

Equitable Distribution between Local Governments.

§ 105-458. Apportionment of payments in lieu of taxes between local units.

The payments received by the State and local governments from the Tennessee Valley Authority in lieu of taxes under section 13 of the Act of Congress creating it, and as amended, shall be apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of each local government's percentage of the total value of the Authority's property in the State, determined as hereinafter provided: Provided, however, that the minimum annual payment to any local government from said fund, including the amounts paid direct to said local government by the Authority, shall not be less than the amount of annual actual tax loss to such local government based upon the two-year average on said property next prior to it being taken over by the Authority. (1941, c. 85, s. 1; 1959, c. 1060; 2009-569, s. 1.)

§ 105-459. Proration of T.V.A. funds.

The Department of Revenue shall determine each year, on the basis of current tax laws, the allocation of the Authority's valuation among the local governments in the same manner as if the property owned or operated by the Authority were owned or operated by a privately owned public utility. The Department of Revenue and the Treasurer of the State of North Carolina shall then prorate the funds received from the Authority by the State and local governments between the local governments upon the basis of the foregoing calculations. (1941, c. 85, s. 2; 1959, c. 1060; 1973, c. 476, s. 193; 2009-569, s. 2.)

§ 105-460. Distribution of funds by State Treasurer.

The Treasurer of the State of North Carolina shall then ascertain the payments to be made to the local governments upon the basis of the provisions of G.S. 105-459 and he is authorized and directed to distribute the same between the local governments in accordance with the foregoing provisions of G.S. 105-459. The Treasurer of the State of North Carolina is further authorized and directed to pay said sums to the local governments each month or so often as he shall receive payments from the Authority, but not more often than once each month, after first deducting from any sum to be paid a local government such amount as has theretofore been paid direct to said local government by the Authority for the same period: Provided, however, that the minimum annual payment to any local government from said fund shall not be less than the average annual

tax on the property taken by the Authority for the two years next preceding the taking. (1941, c. 85, s. 3; 1959, c. 1060.)

§ 105-461. Duty of finance officer, etc.

The finance officer or other proper officer of each local government to which this Subchapter is applicable shall certify each month to the Treasurer of the State of North Carolina a statement of the amount received by the local government direct from the Authority.

No local government shall be entitled to receive its distributive share of said fund from the Treasurer of the State of North Carolina until the foregoing information has been properly furnished. If any such local government shall fail to furnish the information herein required within 10 days from and after receipt by it from the Department of Revenue of request for the same, forwarded by registered mail, then and in that event it shall be barred from participating in the benefits provided for the period for which the same is requested. (1941, c. 85, s. 4; 1973, c. 476, s. 193; 2009-569, s. 3.)

§ 105-462. Local units entitled to benefits; prerequisite for payments.

Any local governments within the State in which the Authority now or may hereafter own property or carry on an operation shall be entitled to the benefits arising under this Subchapter: Provided, however, that no payment shall be made to them by the Treasurer of the State of North Carolina until such time as such local governments shall have certified to the Department of Revenue and the Treasurer of the State of North Carolina the average annual tax loss it has sustained by the taking of said property for the two years immediately preceding the taking thereof: Provided, further, that in the event of any disagreement between said local governments and the Treasurer of the State of North Carolina as to such annual tax loss, then the same shall be determined by the Department of Revenue, and its decision thereon shall be final. (1941, c. 85, s. 5; 1973, c. 476, s. 193.)

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax.

§ 105-463. Short title.

This Article shall be known as the First One-Cent (1¢) Local Government Sales and Use Tax Act. (1971, c. 77, s. 2; 2002-123, s. 7(b).)

§ 105-464. Purpose and intent.

It is the purpose of this Article to afford the counties and municipalities of this State with opportunity to obtain an added source of revenue with which to meet their growing financial needs by providing all counties of the State with authority to levy a one percent (1%) sales and use tax as hereinafter provided. (1971, c. 77, s. 2.)

§ 105-465. County election as to adoption of local sales and use tax.

The board of elections of any county, upon the written request of the board of county commissioners, or upon receipt of a petition signed by qualified voters of the county equal

in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax will be levied.

The special election shall be held under the same rules applicable to the election of members of the General Assembly.

The county board of elections shall prepare ballots for the special election. The question presented on the ballot shall be "FOR one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food" or "AGAINST one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food".

The county board of elections shall fix the date of the special election on a date permitted by G.S. 163A-1592, except that the special election shall not be held within one year from the date of the last preceding special election under this section. (1971, c. 77, s. 2; 1981, c. 560, s. 2; 1991, c. 689, s. 315; 1996, 2nd Ex. Sess., c. 13, s. 1.2; 2013-381, s. 10.8; 2017-6, s. 3.)

§ 105-466. Levy of tax.

(a) In the event a majority of those voting in a special election held pursuant to G.S. 105-465 shall approve the levy of the local sales and use tax, the board of county commissioners may, by resolution, proceed to levy the tax.

(b) In addition, the board of county commissioners may, in the event no election has been held within five years under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than 10 days' public notice and after a public hearing held pursuant thereto, by resolution, impose and levy the local sales and use tax to the same extent and with the same effect as if the levy of the tax had been approved in an election held pursuant to G.S. 105-465.

(b1) If the board of commissioners of a county has imposed the local sales and use tax authorized by this Article and any or all of the taxes authorized by Articles 40 and 42 of this Chapter, with or without a special election, and the county subsequently becomes part of a consolidated city-county, the taxes shall continue in effect unless and until repealed by the governing board of the consolidated city-county.

(c) Collection of the tax, and liability therefor, must begin and continue only on and after the first day of a calendar quarter, as set by the board of county commissioners in the resolution levying the tax. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change. The applicability of a new tax or a tax rate change to purchases from printed catalogs becomes effective on the first day of a calendar quarter after a minimum of 120 days from the date the Secretary notifies the seller that receives orders by means of a catalog or similar publication of the new tax or tax rate change. A local rate increase may only be effective on the first day of a calendar quarter after a minimum of 60 days' notice to sellers by the Secretary.

(d) Upon adoption of a resolution levying the tax, the board of county commissioners shall immediately deliver a certified copy of the resolution to the Secretary,

accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the tax in the county. Upon receipt of these documents, the Secretary shall collect and administer the tax as provided in this Article. (1971, c. 77, s. 2; 1973, c. 302; c. 476, s. 193; 1977, c. 372, s. 1; 1993, c. 485, s. 22; 1995, c. 461, s. 16; 2000-120, s. 12; 2001-414, s. 28; 2003-284, s. 45.10; 2010-95, s. 12; 2016-5, s. 3.17(b).)

§ 105-467. Scope of sales tax.

(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the following:

(1) A retailer's net taxable sales and gross receipts that are subject to the general rate of sales tax imposed by the State under G.S. 105-164.4 except the tax does not apply to the sales price of an item taxable under G.S. 105-164.4(a)(1a).

(2) through (4) Repealed by Session Laws 2011-330, s. 45, effective June 27, 2011.

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.

(5b) Repealed by Session Laws 2013-3.4(c), effective July 1, 2014, and applicable to purchases made on or after that date.

(6), (7) Repealed by Session Laws 2011-330, s. 45, effective June 27, 2011.

(8) The presumed sales price of an item of tangible personal property under G.S. 105-164.12B.

(b) Exemptions and Refunds. – The State exemptions and exclusions contained in Article 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales and use tax authorized to be levied and imposed under this Article. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for the State's fiscal year may not exceed thirteen million three hundred thousand dollars ($13,300,000).

Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services. Sales and use tax liability indirectly incurred by the entity as part of a real property

contract for real property that is owned or leased by the entity and is a capital improvement for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund is due in the same time and manner as provided in G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred.

(c) Sourcing. – The sourcing principles in Article 5 of Subchapter I of this Chapter apply in determining whether the local sales tax applies to a transaction. (1971, c. 77, s. 2; 1983 (Reg. Sess., 1984), c. 1097, s. 9; 1987, c. 557, s. 7; c. 832, s. 4; 1989, c. 692, s. 3.7; 1991, c. 689, s. 316; 1996, 2nd Ex. Sess., c. 13, s. 1.3; 1998-98, s. 30.1; 1998-171, s. 9; 2001-347, s. 2.15; 2001-414, s. 29; 2001-424, s. 34.16(b); 2001-430, s. 13; 2001-487, s. 67(e); 2002-16, s. 12; 2002-159, s. 61; 2005-276, s. 33.23; 2006-66, s. 7.20(a); 2006-162, s. 32; 2007-244, s. 6; 2007-368, s. 2; 2008-107, s. 28.12(c); 2010-166, s. 3.8; 2011-330, s. 45; 2013-316, ss. 3.1(c), 3.4(c), (d); 2013-414, s. 49(b); 2014-3, ss. 6.1(i), 8.2(b); 2015-259, s. 4.2(f); 2016-5, s. 3.8(b); 2016-94, s. 38.5(n); 2017-204, s. 2.9(c).)

§ 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 purchase price of an item or transaction that is not sold in the taxing county but is for storage, use, or consumption in the taxing county and sourced in accordance with Article 5 of Subchapter I of this Chapter. The tax applies to the same items that are subject to tax under G.S. 105-467. The collection and administration of this tax shall be in accordance with Article 5 of Subchapter I of this Chapter.

Where a local sales or use tax was due and has been paid on an item or transaction by the 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 or transaction. 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. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1100, s. 2; 1989, c. 692, s. 3.8; 1991, c. 689, s. 317; 1996, 2nd Ex. Sess., c. 13, s. 1.4; 2012-79, s. 1.10; 2013-414, s. 49(a); 2016-5, s. 3.7(b); 2017-204, s. 2.9(d).)

§ 105-468.1. Certain building materials exempt from sales and use taxes.

The provisions of this Article shall not be applicable with respect to any tangible personal property or digital property purchased for the purpose of fulfilling a real property contract for a capital improvement entered into or awarded, or entered into or awarded pursuant to any bid made, before the effective date of the tax imposed by a taxing county when, absent the provisions of this section, such property would otherwise be subject to tax under the provisions of this Article. (1971, c. 77, s. 3; 2017-204, s. 2.4(e).)

§ 105-469. Secretary to collect and administer local sales and use tax.

(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article. As directed by G.S. 105-164.13B, taxes levied by a county on food are administered as if they were levied by the State under Article 5 of this Chapter. The references in this section to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustments made pursuant to G.S. 105-524. The Secretary must, on a monthly basis, distribute local taxes levied on food to the taxing counties as follows:

(1) The Secretary must allocate one-half of the net proceeds on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b). The Secretary must include one-half of the amount allocated under this subdivision in the distribution made under Article 40 of this Chapter and must include the remaining one-half in the distribution made under Article 42 of this Chapter.

(2) The Secretary must allocate the remaining net proceeds proportionately to each taxing county based upon the amount of sales tax on food collected in the taxing county in the 1997-1998 fiscal year under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws relative to the total amount of sales tax on food collected in all taxing counties in the 1997-1998 fiscal year under Article 39 of this Chapter and under Chapter 1096 of the 1967 Session Laws. The Secretary must include the amount allocated under this subdivision in the distribution made under Article 39 of this Chapter.

(b) The Secretary shall require retailers who collect use tax on sales to North Carolina residents to ascertain the county of residence of each buyer and provide that information to the Secretary along with any other information necessary for the Secretary to allocate the use tax proceeds to the correct taxing county. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1993, c. 485, s. 23; 1996, 2nd Ex. Sess., c. 14, s. 12; 2003-284, s. 45.11(a); 2003-416, s. 27(a); 2004-170, s. 32; 2005-435, s. 41; 2015-268, s. 10.1(e2).)

§ 105-470: Repealed by Session Laws 1991, c. 689, s. 318.

§ 105-471. Retailer to collect sales tax.

Every person liable for tax in a taxing county shall on and after the levy of the tax herein authorized collect the one percent (1%) local sales tax provided by this Article. A person is required to collect a local use tax on a transaction if a local sales tax does not apply to the transaction in accordance with G.S. 105-164.8(c).

The tax to be collected under this Article shall be collected as a part of the sales price of an item or transaction subject to tax in accordance with G.S. 105-467. The tax shall be stated and charged separately from the sales price or purchase price and shall be shown separately on the sales record, except as provided in G.S. 105-164.7, and shall be paid by the purchaser to the person liable for the tax as trustee for and on account of the State or county wherein the tax is imposed. It is the intent and purpose of this Article that the local sales and use tax herein authorized to be imposed and levied by a taxing county shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the person liable for the tax. The Secretary of Revenue shall design the necessary forms for filing returns and instructions to insure the full collection from a person liable for this tax, and the Secretary may adapt the present form used for the reporting and collecting of the State sales and use tax to this purpose. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 2016-5, s. 3.7(c); 2017-204, s. 2.9(e); 2018-5, s. 38.5(w).)

§ 105-472. Disposition and distribution of taxes collected.

(a) County Allocation. – The Secretary shall, on a monthly basis, allocate to each taxing county for which the Secretary collects the tax the net proceeds of the tax collected in that county under this Article. For the purpose of this section, "net proceeds" means the gross proceeds of the tax collected in each county under this Article less taxes refunded, the cost to the State of collecting and administering the tax in the county as determined by the Secretary, and other deductions that may be charged to the county. If the Secretary collects local sales or use taxes in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate the taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article during that month and shall include them in the monthly distribution. Amounts collected by electronic funds transfer payments are included in the distribution for the month in which the return that applies to the payment is received.

(b) Distribution Between Counties and Cities. – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(2) Ad Valorem Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year.

(b1) Repealed by Session Laws 2008-134, s. 14(b), effective July 28, 2008.

(c) Municipality Defined. – As used in this Article, the term "municipality" means "city" as defined in G.S. 153A-1.

(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or

after July 1, 1999. (1971, c. 77, s. 2; 1973, c. 476, s. 193; c. 752; 1979, c. 12, s. 1; 1979, 2nd Sess., c. 1137, s. 49; 1981, c. 4, s. 2; 1985 (Reg. Sess., 1986), c. 934, s. 2; 1991, c. 325, s. 8; 1993, c. 485, s. 24; 1999-458, s. 6; 2001-427, s. 13(a); 2001-487, s. 118(b); 2002-72, s. 5; 2003-349, s. 5; 2004-203, s. 5(j); 2007-323, s. 31.16.3(d); 2008-134, s. 14(b).)

§ 105-473. Repeal of levy.

(a) The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether the levy of a one percent (1%) sales and use tax theretofore levied should be repealed.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly.

The county board of elections shall prepare ballots for the special election which shall contain the words "FOR repeal of the one percent (1%) local sales and use tax levy," and the words "AGAINST repeal of the one percent (1%) local sales and use tax levy," with appropriate squares so that each voter may designate his vote by his cross (X) mark.

The county board of elections shall fix the date of the special election on a date permitted by G.S. 163A-1592; provided, however, that the special election shall not be held within one year from the date of the last preceding special election held under this section.

(b) In the event a majority of those voting in a special election held pursuant to this section shall approve the repeal of the levy, the board of county commissioners shall, by resolution, proceed to terminate the levy and the imposition of the tax in the taxing county unless and until the tax is levied again as provided in G.S. 105-466(a).

(c) In addition, the board of county commissioners may, by resolution and without the necessity of an election proceed to terminate the levy and the imposition of the tax in the taxing county if the tax was levied under the provisions of G.S. 105-466(b).

(d) No termination of taxes levied and imposed under this Article shall be effective until the end of the fiscal year in which the repeal election was held.

(e) The board of county commissioners, upon adoption of said resolution, shall cause a certified copy of the resolution to be delivered immediately to the Secretary of Revenue, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the repeal of the tax in the county.

(f) No liability for any tax levied under this Article which shall have attached prior to the effective date on which a levy is terminated shall be discharged as a result of such termination, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which a levy is terminated shall be denied as a result of such termination. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1981, c. 560, s. 2; 1995, c. 461, s. 17; 2013-381, s. 10.9; 2017-6, s. 3.)

§ 105-474. Definitions; construction of Article; remedies and penalties.

The definitions set forth in Article 5 of Subchapter I of this Chapter shall apply to this Article insofar as such definitions are not inconsistent with the provisions of this Article, and all other provisions of Articles 5 and 9 of Subchapter I of this Chapter as the same relate to the North Carolina Sales and Use Tax Act shall be applicable to this Article unless such provisions are inconsistent with the provisions of this Article. The administrative interpretations made by the Secretary of Revenue with respect to the North Carolina Sales and Use Tax Act, to the extent not inconsistent with the provisions of this Article, may be uniformly applied in the construction and interpretation of this Article. It is the intention of this Article that the provisions of this Article and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized.

The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Articles 5 and 9 of Subchapter I of this Chapter, shall be applicable in like manner to the tax authorized to be levied and collected under this Article, to the extent that the same are not inconsistent with the provisions of this Article. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 2017-204, s. 2.9(f).)

§§ 105-475 through 105-479. Reserved for future codification purposes.

Article 40.

First One-Half Cent (1/2¢) Local Government Sales and Use Tax.

§ 105-480. Short title.

This Article shall be known as the First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act. (1983, c. 908, s. 1; 2002-123, s. 8(b).)

§ 105-481. Purpose and intent.

It is the purpose of this Article to afford the counties and cities of this State an opportunity to obtain an added source of revenue with which to meet their growing financial needs, and to reduce their reliance on other revenues, such as the property tax, by providing all counties of the State that are subject to this Article with authority to levy one-half percent (1/2%) sales and use taxes. (1983, c. 908, s. 1.)

§ 105-482. Limitations.

This Article applies only to counties that levy one percent (1%) sales and use taxes under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws. (1983, c. 908, s. 1; 1993, c. 485, s. 25.)

§ 105-483. Levy and collection of additional taxes.

Any county subject to this Article may levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, distribution, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean Article 40

of this Chapter. The exemption for building materials in G.S. 105-468.1 does not apply to taxes levied under this Article. (1983, c. 908, s. 1; 1993, c. 485, s. 26.)

§ 105-484. Form of ballot.

(a) The form of the question to be presented on a ballot for a special election concerning the additional taxes authorized by this Article shall be: "FOR additional one-half percent (1/2%) local sales and use taxes" or "AGAINST additional one-half percent (1/2%) local sales and use taxes."

(b) The form of the question to be presented on a ballot for a special election concerning the repeal of any additional taxes levied pursuant to this Article shall be: "FOR repeal of the additional one-half percent (1/2%) local sales and use taxes" or "AGAINST repeal of the additional one-half percent (1/2%) local sales and use taxes." (1983, c. 908, s. 1.)

§ 105-485: Repealed by Session Laws 1991, c. 689, s. 318.

§ 105-486. Distribution of additional taxes.

(a) County Allocation. – The Secretary shall, on a monthly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer.

(b) Adjustment. – The Secretary shall then adjust the amount allocated to each county under subsection (a) by multiplying the amount by the appropriate adjustment factor set out in the table below. If, after applying the adjustment factors, the resulting total of the amounts allocated is greater or lesser than the net proceeds to be distributed, the amount allocated to each county shall be proportionally adjusted to eliminate the excess or shortage.

County	Adjustment Factor
Dare	1.49
Brunswick	1.17
Orange	1.15
Carteret and Durham	1.14
Avery	1.12
Moore	1.11
Transylvania	1.10
Chowan, McDowell, and Richmond	1.09
Pitt and New Hanover	1.07
Beaufort, Perquimans, Buncombe, and Watauga	1.06
Cabarrus, Jackson, and Surry	1.05
Alleghany, Bladen, Robeson, Washington, Craven, Henderson, Onslow, and Vance	1.04
Gaston, Granville, and Martin	1.03
Alamance, Burke, Caldwell, Chatham, Duplin, Edgecombe, Haywood, Swain, and Wilkes	1.02
Hertford, Union, Stokes, Yancey, Halifax, Rockingham, and Cleveland	1.01
Alexander, Anson, Johnston, Northampton, Pasquotank, Person, Polk, and Yadkin	1.00

Catawba, Harnett, Iredell, Pamlico, Pender, Randolph, Stanly, and Tyrrell	0.99
Cherokee, Cumberland, Davidson, Graham, Hyde, Macon, Rutherford, Scotland, and Wilson	0.98
Ashe, Bertie, Franklin, Hoke, Lincoln, Montgomery, and Warren	0.97
Wayne, Clay, Madison, Sampson, Wake, Lee, and Forsyth	0.96
Caswell, Gates, Mitchell, and Greene	0.95
Currituck and Guilford	0.94
Davie and Nash	0.93
Rowan and Camden	0.92
Jones	0.90
Mecklenburg	0.89
Lenoir	0.88
Columbus	0.81

(c) Distribution Between Counties and Cities. – The amount allocated to each taxing county shall then be divided among the county and its municipalities in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999. (1983, c. 908, s. 1; 1985 (Reg. Sess., 1986), c. 906, s. 2; 1987, c. 832, s. 6; 1987 (Reg. Sess., 1988), c. 1082, s. 2; 1999-458, s. 7; 2001-427, s. 13(b), (c).)

§ 105-487. Use of additional tax revenue by counties.

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes after the first five fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes.

(b) Repealed by Session Laws 1998-98, s. 31, effective August 14, 1998.

(c) The Local Government Commission may, upon petition by a county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) of this section to be used for public school capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (½%) sales and use tax revenue for that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school capital needs, but also the other capital needs of the petitioning county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition

stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) of this section that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) of this section for any lawful purpose are final and shall continue in effect until the restrictions imposed by that subsection expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (½%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) of this section in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes. (1983, c. 908, s. 1; 1993, c. 255, ss. 1, 3; 1998-98, s. 31; 1998-186, s. 1; 2009-395, s. 1.)

Article 41.

Alternative Local Government Sales and Use Taxes.

§§ 105-488 through 105-494: Repealed by Session Laws 1991, c. 689, s. 318.

Article 42.

Second One-Half Cent (1/2¢) Local Government Sales and Use Tax.

§ 105-495. Short title.

This Article shall be known as the Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act. (1985 (Reg. Sess., 1986), c. 906, s. 1; 2002-123, s. 9(b).)

§ 105-496. Purpose and intent.

It is the purpose of this Article to afford the counties and cities of this State an opportunity to obtain an added source of revenue with which to meet their growing financial needs, and to reduce their reliance on other revenues, such as the property tax and federal revenue sharing, by providing all counties of the State that are subject to this Article with authority to levy one-half percent (1/2%) sales and use taxes. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-497. Limitations.

This Article applies only to counties that levy one percent (1%) sales and use taxes under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws and also levy one-half percent (1/2%) local sales and use taxes under Article 40 of this Chapter. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-498. Levy and collection of additional taxes.

Any county subject to this Article may levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, distribution, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean Article 42 of this Chapter. The exemption for building materials in G.S. 105-468.1 does not apply to taxes levied under this Article. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1993, c. 485, s. 27.)

§ 105-499. Form of ballot.

(a) The form of the question to be presented on a ballot for a special election concerning the additional taxes authorized by this Article shall be: "FOR one-half percent (1/2%) local sales and use taxes in addition to the current one and one-half percent (1 1/2%) local sales and use taxes" or "AGAINST one-half percent (1/2%) local sales and use taxes in addition to the current one and one-half percent (1 1/2%) local sales and use taxes."

(b) The form of the question to be presented on a ballot for a special election concerning the repeal of any additional taxes levied pursuant to this Article shall be: "FOR repeal of the additional one-half percent (1/2%) local sales and use taxes, thus reducing local sales and use taxes to one and one-half percent (1 1/2%)" or "AGAINST repeal of the additional one-half percent (1/2%) local sales and use taxes, thus reducing local sales and use taxes to one and one-half percent (1 1/2%)." (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-500: Repealed by Session Laws 1991, c. 689, s. 318.

§ 105-501. Distribution of additional taxes.

(a) Method. – The Secretary must, on a monthly basis, allocate to each taxing county the net proceeds of the additional one-half percent (1/2%) sales and use taxes collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month.

The Secretary must divide and distribute the funds allocated to a taxing county each month under this section between the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public.

(b) Deductions. – The costs incurred by the State to provide the functions listed in this subsection that support local governments are deductible from the collections to be allocated each month for distribution.

(1) The Department's cost of the following for the preceding month must be deducted and credited to the Department:

a. The Local Government Division.
b. The Property Tax Commission.

(1a) The Department of State Treasurer's costs for personnel and operations of the Local Government Commission.

(2) One-twelfth of the costs of the following for the preceding fiscal year must be deducted and credited to the General Fund:

a. The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.

b. Repealed by Session Laws 2013-183, s. 2.3(b), effective July 1, 2014.

c. Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 832, s. 8; 1987 (Reg. Sess., 1988), c. 1082, s. 4; 1995, c. 41, s. 4; c. 370, s. 1; 1999-458, s. 9; 2001-427, s. 13(d); 2002-126, s. 30D(a); 2006-264, s. 29(f); 2007-323, s. 31.16.4(b); 2010-31, s. 26.1(a); 2011-145, s. 27.1(a), (b).)

§ 105-502. Use of additional tax revenue by counties.

(a) Restriction. - The county must use sixty percent (60%) of the amount of revenue specified in this subsection for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect:

(1) The amount of revenue the county receives under this Article.

(2) If the amount allocated to the county under G.S. 105-486 is greater than the amount allocated to the county under G.S. 105-501(a), the difference between the two amounts.

(b) Exception. - The Local Government Commission may, upon petition by a county, authorize a county to use part or all of the revenue, otherwise required by subsection (a) to be used for public school capital outlay purposes, for any lawful purpose. The petition must be in the form of a resolution adopted by the Board of County Commissioners and transmitted to the Local Government Commission. The petition must demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the specified revenue for these purposes.

In making its decision, the Local Government Commission must consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county. The Commission may consider information from sources other than the petition. The Commission must issue a written decision on each petition stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of the revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and continue in effect until the restrictions expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(c) Reserve Fund. - A county may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund. A county must specifically identify revenue placed in a reserve fund in accordance with Chapter 159 of the General Statutes.

(d) Taxes in Effect. - For purposes of this section in determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 622, s. 11; 1993, c. 255, ss. 2, 4; 1998-186, s. 2; 2008-134, s. 13(a); 2009-395, s. 2.)

§ 105-503: Recodified as § 115C-440.1 by Session Laws 1995 (Regular Session, 1996), c. 666, s. 4.

§ 105-504: Repealed by Session Laws 1998-98, s. 32.

§ 105-505. Reserved for future codification purposes.

Article 43.

Local Government Sales and Use Taxes for Public Transportation.

Part 1. General.

§ 105-506. Short title; purpose.

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the counties and transportation authorities of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides them with authority to levy sales and use taxes. All such taxes must be approved in a referendum. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

§ 105-506.1. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Board of trustees. – The governing body of a transportation authority.

(2) Net proceeds. – Gross proceeds less the cost of administering and collecting the tax.

(3) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, and the interconnected bicycle and pedestrian infrastructure that supports public transportation, bus lanes, and busways. The term does not

include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(4) Transportation authority. – For the purposes of Parts 3 and 4 of this Article, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes; and for the purposes of Parts 3 and 5 of this Article, a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

§ 105-506.2. Exemption of food.

A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). (1997-417, s. 1; 2008-134, s. 74(a); 2009-527, s. 2(a), (b).)

Part 2. Mecklenburg County.

§ 105-507. Limitations.

A county may not levy a tax under this Part unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this Part unless it has developed a financial plan and distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

§ 105-507.1. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Part. The election shall be held in accordance with the procedures of G.S. 163A-1592. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems." (1997-417, s. 1; 2009-527, s. 2(a), (b); 2013-381, s. 10.10; 2017-6, s. 3.)

§ 105-507.2. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to G.S. 105-507.1 vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (½%) local sales and use taxes in addition to any other State and local sales and use taxes levied

pursuant to law. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to "this Article" mean "Part 1 of Article 43 of Chapter 105 of the General Statutes". (1997-417, s. 1; 2008-134, s. 74(b); 2009-527, s. 2(a), (b).)

§ 105-507.3. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Part by that county. If the Secretary collects taxes under this Part in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. – A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this Part only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (1997-417, s. 1; 2001-427, s. 13(f); 2009-527, s. 2(a), (b).)

§ 105-507.4. Applicability.

This Part applies only to Mecklenburg County. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

Part 3. Transportation Authorities.

§ 105-508. Special districts.

(a) Authority. – A transportation authority may create a special district as provided in Parts 4 and 5 of this Article. A special district is subject to the provisions of this Part as well as the Part under which it was created. A special district created under this Article is a local government body corporate and politic and has the power to carry out the purposes of the Part under which it is established.

(b) Governance. – The following entity shall serve ex officio as the governing board and be responsible for budget adoption and the operation and management of the transit services provided by the district:

(1) The board of trustees of the transportation authority, if the special district consists of multiple counties. If the special district is expanded under G.S. 105-509(d) or G.S. 105-510(d) to include more than one county, then the board of trustees of the transportation authority shall become the governing board of the district beginning on the first day of the next fiscal year after expansion of the district.

(2) The county board of commissioners, if the special district consists of one county. The board may contract with the transportation authority as needed.

(c) Filing Requirement. – The transportation authority creating a special district shall name it and file with the Secretary of State the documents creating the district, and shall also file notice of the addition to and removal from the district of any counties, or of the abolition of the special district. (2009-527, s. 2(b).)

§ 105-508.1. Limitations.

A transportation authority may not levy a tax under Part 4 or 5 of this Article unless:

(1) It operates a public transportation system.

(2) It has developed a financial plan and distributed it to each unit of local government located within its territorial jurisdiction. The plan must be approved by the board of commissioners of each county in the district prior to the levy of the tax. If the board of commissioners of a county in a multicounty district does not adopt the plan, the transportation authority may remove that county from the district, and no tax may be levied in that county under this Part. The financial plan must provide for equitable use of the net proceeds within or to benefit the special district created under Part 4 or Part 5 of this Article and consider (i) the identified needs of local public transportation systems in the district, (ii) human service transportation systems within the district, and (iii) expansion of public transportation systems to underserved areas of the district. The financial plan must also be approved by all Metropolitan Planning Organizations under Article 16 of Chapter 136 of the General Statutes whose jurisdiction includes any of the area of the special district. The plan may be revised from time to time. An interlocal agreement between the transportation authority and all the counties in the special district may require periodic review and approval of the financial plan.

(3) The tax is approved by the voters. (2009-527, s. 2(b).)

§ 105-508.2. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each special district the net proceeds of the tax levied under this Part within the special tax district, to be used for the benefit of that district.

(b) Use. – A special district must expend the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-508.1 and use the net proceeds only for financing, constructing, operating, and maintaining public transportation systems. The special district shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (2009-527, s. 2(b).)

Part 4. Regional Public Transportation Authority (Triangle).

§ 105-509. Local election on adoption of sales and use tax – regional public transportation authority.

(a) Special District. – A regional public transportation authority may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section.

The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails in all the counties in the district, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional public transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held on a date permitted by and in accordance with the procedures of G.S. 163A-1592. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:
  a. A majority vote of each of the county boards of commissioners within the special district, if it is a multicounty special district.
  b. A majority of the county board of commissioners within the special district, if it is a single-county special district.
(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems."

(d) Expansion. – If a special district created under this Part does not include all the counties in the territorial jurisdiction of a transportation authority, it may be expanded to include an additional whole county or counties by joint action of the board of trustees of the transportation authority and the board of commissioners of the county or boards of commissioners of the counties to be added, with the approval of the voters in the county or counties to be added. The procedure for expansion of a district is the same as for the initial creation of the district, but the referendum shall be held separately within each of the counties to be added. (2009-527, s. 2(b); 2013-381, s. 10.11; 2017-6, s. 3.)

§ 105-509.1. Levy and collection of sales and use tax – regional public transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-509 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (½%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one or more but not all of the counties, the counties in which the referendum was not approved are removed from the special district upon

certification of the election result and the county or counties that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean "Part 4 of Article 43 of Chapter 105 of the General Statutes." Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district. (2009-527, s. 2(b).)

Part 5. Regional Transportation Authority (Triad).

§ 105-510. Local election on adoption of sales and use tax – regional transportation authority.

(a) Special District. – A regional transportation authority may create a special district that consists of the entire area of one or two counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The special district may not include counties other than Forsyth and Guilford. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held on a date permitted by and in accordance with the procedures of G.S. 163A-1592. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:
  a. A majority vote of both of the county boards of commissioners within the special district, if it is a multicounty special district.
  b. A majority of the county board of commissioners within the special district, if it is a single-county special district.
(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems."

(d) Expansion. – If a special district created under this Part does not include both of the eligible counties under subsection (a) of this section, it may be expanded to include the other county by joint action of the board of trustees of the transportation authority and the

board of commissioners of the county to be added, with the approval of the voters in the county to be added. The procedure for expansion of the district is the same as for the initial creation of the district, but the referendum shall be held separately in the county to be added. (2009-527, s. 2(b); 2013-381, s. 10.12; 2017-6, s. 3.)

§ 105-510.1. Levy and collection of sales and use tax – regional transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-510 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one but not both of the counties, the county in which the referendum was not approved is removed from the special district upon certification of the election result and the county that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean "Part 5 of Article 43 of Chapter 105 of the General Statutes." Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district. (2009-527, s. 2(b).)

Part 6. Other Counties.

§ 105-511. Applicability.

This Part applies only in counties other than Durham, Forsyth, Guilford, Mecklenburg, Orange, or Wake. (2009-527, s. 2(b).)

§ 105-511.1. Limitations.

A county may not levy a tax under this Part unless the county or at least one unit of local government in the county operates a public transportation system. As used in this Part, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General Statutes. As used in this Part, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system. (2009-527, s. 2(b).)

§ 105-511.2. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-quarter percent (1/4%) may be levied in accordance with this Part. The election shall be held on a date jointly agreed upon by the boards and shall be held on a date permitted by and in accordance with the procedures of G.S. 163A-1592. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[ ] FOR [ ] AGAINST

One-quarter percent (1/4%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems." (2009-527, s. 2(b); 2013-381, s. 10.13; 2017-6, s. 3.)

§ 105-511.3. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to this Part vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-quarter percent (1/4%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to "this Article" mean "Part 6 of Article 43 of Chapter 105 of the General Statutes." (2009-527, s. 2(b).)

§ 105-511.4. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Part by that county. If the Secretary collects taxes under this Part in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate a public transportation system as follows:

(1) To the county based on the population of the county that is not in an incorporated area, and to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection.

(3) Notwithstanding subdivision (1) of this subsection, if a county to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that county not in an incorporated area shall be excluded from the calculations of subdivision (1) of this subsection.

If a county or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate or contract for the operation of a public transportation system, that county or municipality shall begin receiving funds beginning the first day of July that is more than 30 days thereafter.

(b) A county or municipality may use funds received under this Part only for financing, constructing, operating, and maintaining public transportation systems. Every unit of government

shall use funds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (2009-527, s. 2(b).)

§ 105-512. Reserved for future codification purposes.

§ 105-513. Reserved for future codification purposes.

§ 105-514. Reserved for future codification purposes.

Article 44.

Local Government Hold Harmless and Allocation Provisions.

§ 105-515 through 105-520: Repealed by Session Laws 2007-323, s. 31.16.4(a), effective October 1, 2009, and applicable to sales occurring on or after that date.

§§ 105-515 through 105-520: Repealed by Session Laws 2007-323, s. 31.16.4(a), effective October 1, 2009, and applicable to sales occurring on or after that date.

§ 105-515 through 105-520: Repealed by Session Laws 2007-323, s. 31.16.4(a), effective October 1, 2009, and applicable to sales occurring on or after that date.

§ 105-521: Repealed by Session Laws 2016-5, s. 5.2, effective May 11, 2016.

§ 105-522. City hold harmless for repealed local taxes.

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

(1) Eligible municipality. – A municipality that was incorporated on or before October 1, 2008, and receives a distribution of sales and use taxes under G.S. 105-472.

(2) Hold harmless amount. – The sum of the following amounts allocated for distribution to a municipality for a month. The references in this subdivision to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustment made pursuant to G.S. 105-524. The amounts are as follows:

a. The amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of repealing a one-half percent (1/2%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis.

(b) Requirement. – A county is required to hold the eligible municipalities in the county harmless from the repeal of the local sales and use taxes formerly imposed under

this Article. The Secretary must add an eligible municipality's hold harmless amount to the amount distributed to the municipality under this Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must reduce each county's monthly allocation under G.S. 105-472(b) or under Chapter 1096 of the 1967 Session Laws by the hold harmless amounts for the municipalities in that county. (2007-323, ss. 31.16.3(f), 31.16.4(c); 2007-345, s. 14.4(a); 2008-134, ss. 14(a), 15(c), (f), (g); 2015-268, s. 10.1(e3).)

§ 105-523. County hold harmless for repealed local taxes.

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

(b) Definitions. – The following definitions apply in this section:

(1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year. A county's Medicaid service costs for fiscal years 2008-2009, 2009-2010, and 2010-2011 are determined without regard to the changes made to the Federal Medical Assistance Percentage by section 5001 of the American Recovery and Reinvestment Act of 2009.

(3) Repealed sales tax amount. – The sum of the following amounts allocated for distribution to a county for a month. The references in this subdivision to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustment made pursuant to G.S. 105-524. The amounts are as follows:

a. The amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of repealing a one-half percent (1/2%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each

fiscal year, the Secretary must determine each county's hold harmless payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The Secretary of the Department of Health and Human Services must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold by February 24th of each year, and the data needed for the final calculation of each county's hold harmless threshold by July 24th of each year. (2007-323, s. 31.16.4(d); 2007-345, s. 14.4(b); 2008-134, s. 15(a), (d), (f), (h); 2009-399, s. 4(a); 2010-95, s. 14; 2014-100, ss. 37.2(a)-(d); 2015-268, s. 10.1(e4).)

§ 105-524. Distribution of additional sales tax revenue for economic development, public education, and community colleges.

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

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

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

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

County	Allocation Percentage
Alamance	0.00%
Alexander	1.69%
Alleghany	0.31%
Anson	0.96%
Ashe	0.62%
Avery	0.00%
Beaufort	0.17%

Bertie	0.94%
Bladen	1.03%
Brunswick	0.00%
Buncombe	0.00%
Burke	2.19%
Cabarrus	0.00%
Caldwell	1.72%
Camden	0.48%
Carteret	0.00%
Caswell	1.35%
Catawba	0.00%
Chatham	1.58%
Cherokee	0.24%
Chowan	0.26%
Clay	0.32%
Cleveland	1.43%
Columbus	2.63%
Craven	1.01%
Cumberland	0.06%
Currituck	0.00%
Dare	0.00%
Davidson	4.96%
Davie	1.14%
Duplin	1.97%
Durham	0.00%
Edgecombe	1.86%
Forsyth	0.00%
Franklin	2.44%
Gaston	1.96%
Gates	0.68%
Graham	0.31%
Granville	1.87%
Greene	1.20%
Guilford	0.00%
Halifax	0.76%
Harnett	5.17%
Haywood	0.05%
Henderson	0.68%
Hertford	0.47%
Hoke	2.58%
Hyde	0.03%
Iredell	0.00%
Jackson	0.00%

Johnston	3.26%
Jones	0.63%
Lee	0.37%
Lenoir	1.56%
Lincoln	1.74%
Macon	0.00%
Madison	1.03%
Martin	0.31%
McDowell	0.68%
Mecklenburg	0.00%
Mitchell	0.29%
Montgomery	1.05%
Moore	0.00%
Nash	1.16%
New Hanover	0.00%
Northampton	0.94%
Onslow	1.10%
Orange	0.33%
Pamlico	0.40%
Pasquotank	0.02%
Pender	1.69%
Perquimans	0.50%
Person	0.74%
Pitt	0.16%
Polk	0.74%
Randolph	4.27%
Richmond	0.54%
Robeson	3.00%
Rockingham	2.18%
Rowan	3.90%
Rutherford	1.63%
Sampson	2.10%
Scotland	0.83%
Stanly	1.04%
Stokes	1.99%
Surry	0.00%
Swain	0.32%
Transylvania	0.16%
Tyrrell	0.15%
Union	4.35%
Vance	0.36%
Wake	0.00%
Warren	1.01%

Washington	0.33%
Watauga	0.00%
Wayne	2.27%
Wilkes	1.55%
Wilson	0.39%
Yadkin	1.31%
Yancey	0.52%.

(d) Use of Funds. – The amount allocated to a taxing county under this section must be divided among the county and its municipalities in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. The county must use the revenue it receives under this section for economic development, public education, and community college purposes.

(e) **(Repealed effective for fiscal years beginning on or after July 1, 2016)** State Contribution. – For fiscal years beginning on or after July 1, 2016, the Secretary must annually withhold, in equal monthly installments, seventeen million six hundred thousand dollars ($17,600,000) from sales and use tax collections under Article 5 of this Chapter. The Secretary must allocate the monthly amount withheld under this subsection to the taxing counties as follows:

(1) Fifty percent (50%) in the distribution made under Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws, not including the revenue allocated under G.S. 105-469.

(2) Twenty-five percent (25%) in the distribution made under Article 40 of this Chapter, not including the calculation of the adjustment pursuant to G.S. 105-486(b).

(3) Twenty-five percent (25%) in the distribution made under Article 42 of this Chapter.

(f) Taxing County. – For purposes of this section, the term "taxing county" means a county that levies the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

(g) Adjustments. – The adjustments made under this section to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter shall not be included in the calculations made under G.S. 105-469, 105-522, and 105-523. (2015-241, s. 32.19(b); 2015-268, s. 10.1(e1); 2016-94, s. 38.5(o).)

§ 105-525: Reserved for future codification purposes.

§ 105-526: Reserved for future codification purposes.

§ 105-527: Reserved for future codification purposes.

§ 105-528: Reserved for future codification purposes.

§ 105-529: Reserved for future codification purposes.

§ 105-530: Reserved for future codification purposes.

§ 105-531: Reserved for future codification purposes.

§ 105-532: Reserved for future codification purposes.

§ 105-533: Reserved for future codification purposes.

§ 105-534: Reserved for future codification purposes.

Article 46.

One-Quarter Cent (1/4¢) County Sales and Use Tax.

§ 105-535. Short title.

This Article is the One-Quarter Cent (1/4¢) County Sales and Use Tax Act. (2007-323, s. 31.17(b).)

§ 105-536. Limitations.

This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter. (2007-323, s. 31.17(b).)

§ 105-537. Levy.

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of county commissioners may, by resolution and after 10 days' public notice, levy a local sales and use tax at a rate of one-quarter percent (0.25%).

(b) Vote. – The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county as provided in this Article. The election shall be held in accordance with the procedures of G.S. 163A-1592.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article shall be:

"[ ] FOR [ ] AGAINST

Local sales and use tax at the rate of one-quarter percent (0.25%) in addition to all other State and local sales and use taxes."

(d) Repealed by Session Laws 2014-3, s. 14.22, effective May 29, 2014. (2007-323, s. 31.17(b); 2013-381, s. 10.14; 2014-3, s. 14.22; 2017-6, s. 3.)

§ 105-538. Administration of taxes.

The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month. For purposes of this Article, the term "net proceeds" has the same meaning as defined in G.S. 105-472.

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. (2007-323, s. 31.17(b); 2007-345, s. 14.5(a); 2008-134, s. 75; 2009-445, s. 18; 2016-5, s. 3.21.)

§§ 105-539 through 105-549: Reserved for future codification purposes.

SUBCHAPTER IX. MULTICOUNTY TAXES.

Article 50.

Regional Transit Authority Vehicle Rental Tax.

§ 105-550. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. – A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

(2) Long-term lease or rental. – Defined in G.S. 105-187.1.

(3) Motorcycle. – Defined in G.S. 20-4.01.

(4) Repealed by Session Laws 1998-98, s. 33.

(5) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(6) Short-term lease or rental. – A lease or rental that is not a long-term lease or rental.

(7) U-drive-it vehicle. – Defined in G.S. 20-4.01. (1997-417, s. 3; 1998-98, s. 33; 1999-452, s. 26.)

§ 105-551. Tax on gross receipts authorized.

(a) Tax. – The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting U-drive-it vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

(b) Restrictions. – The board of trustees of an Authority may not levy a tax under this section or increase the tax rate of a tax levied under this section until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.

(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(3) The board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Special Tax District. – If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than five percent (5%), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority, exceed five percent (5%). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-554. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article. (1997-417, s. 3; 1998-98, s. 34; 1999-445, s. 3; 1999-452, s. 27.)

§ 105-552. Collection and administration of gross receipts tax.

(a) Effective Date. – A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the second month after the board of trustees adopts the resolution.

(b) Collection. – A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a U-drive-it vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the U-drive-it vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the U-drive-it vehicle or motorcycle had elected to pay the optional gross receipts tax.

(c) Penalties and Remedies. – The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of this Chapter apply to a tax levied under this Article. The board of trustees of an Authority may exercise any power the Secretary of Revenue or a board of county commissioners may exercise in collecting local sales and use taxes. (1997-417, s. 3; 1998-98, s. 35; 1999-452, s. 28.)

§ 105-553. Exemptions and refunds.

No exemptions are allowed from a tax levied under this Article. No refunds are allowed for a tax lawfully levied under this Article. (1997-417, s. 3.)

§ 105-554. Use of tax proceeds.

An Authority that levies a tax under this Article may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. An Authority shall use the tax proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. Authorized purposes for which an Authority may use funds include the following:

(1) Pledging funds in connection with the financing of a public transportation system or any part of a public transportation system.

(2) Paying a note, bond, or other obligation entered into by the Authority pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes. (1997-417, s. 3.)

§ 105-555. Repeal of tax or decrease in tax rate.

The board of trustees of an Authority may repeal a tax levied under this Article or decrease the tax rate of a tax levied under this Article. The same restrictions that apply to the levy of a tax or an increase in a tax rate under this Article apply to the repeal of the tax or a decrease in the tax rate.

A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the second month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease. (1997-417, s. 3.)

§§ 105-556 through 105-559. Reserved for future codification purposes.

Article 51.

Regional Transit Authority Registration Tax.

§ 105-560. Definitions.

(1) Authority. – Any of the following:

a. A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes that includes two or more counties.

b. A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

c. A regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

(2) Board of trustees. – The governing body of an Authority.

(3) Public transportation system. – Defined in G.S. 105-550. (1997-417, s. 4.)

§ 105-561. Authority registration tax authorized.

(a) Tax Authorized. – The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed eight dollars ($8.00) a year.

(b) Restrictions. – The board of trustees of an Authority may not levy a tax under this Article or increase the tax rate until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.

(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(3) Except where the levy or increase in tax is necessary for debt service on bonds or notes that each of the boards of county commissioners had previously approved under G.S. 159-51, the board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Resolutions. – The board of trustees and the board of county commissioners, upon adoption of a resolution pursuant to this section, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles.

(d) Special Tax District. – If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes or a regional public transportation authority created under Article 26 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than eight dollars ($8.00), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in

this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority; exceed eight dollars ($8.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes or a regional public transportation authority created under Article 26 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-564. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article. (1997-417, s. 4; 1999-445, s. 4; 2009-527, s. 3(a)-(d); 2013-414, s. 50.)

§ 105-562. Collection and scope.

(a) Collection. – A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the sixth calendar month after the board of trustees adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a county the entire area of which is within the jurisdiction of the Authority, the Division of Motor Vehicles shall collect and administer the tax. To the extent the tax applies to vehicles whose tax situs is in a county that is only partially within the jurisdiction of the county, the Authority shall collect and administer the tax. The Authority may contract with one or more local governments in its jurisdiction to collect the tax on its behalf.

Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles shall proceed to collect and administer the tax as provided in this Article. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to carry out its responsibilities under this Article.

(b) Scope. – Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this Article. Taxes shall be prorated in accordance with G.S. 20-95.

(c) Tax Situs. – The tax situs of a motor vehicle for the purpose of this Article is its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for the purpose of this Article is the ad valorem tax situs it would have if it were not exempt from ad valorem tax.

(d) Any tax or tax increase levied under this Article applicable to a motor vehicle sold or leased by a motor vehicle dealer, as defined in G.S. 20-286(11), is only applicable to a motor vehicle sale or lease made on or after the effective date of the tax or tax increase regardless of the date of submission of a title and registration application for the motor

vehicle to the Division of Motor Vehicles. No tax or tax increase levied under this Article applies to a motor vehicle sale or lease made prior to the effective date of the tax or tax increase. (1997-417, s. 4; 2009-527, s. 5(a); 2018-42, s. 6.)

§ 105-563. Modification or repeal of tax.

The Board of Trustees may, by resolution, repeal the levy of the tax under this Article or decrease the amount of the tax, under the same procedures and subject to the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the sixth calendar month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease. (1997-417, s. 4; 2009-527, s. 5(b).)

§ 105-564. Distribution and use of proceeds.

The Authority shall retain the net proceeds of taxes it collects under this Article. Taxes collected by the Division of Motor Vehicles under this Article shall be credited to a special fund and the net proceeds disbursed quarterly to the appropriate Authority. Interest credited to the fund shall be disbursed quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.

An Authority that levies a tax under this Article may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. An Authority shall use the tax proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (1997-417, s. 4.)

§ 105-565. Reserved for future codification purposes.

§ 105-566. Reserved for future codification purposes.

§ 105-567. Reserved for future codification purposes.

§ 105-568. Reserved for future codification purposes.

§ 105-569. Reserved for future codification purposes.

Article 52.

County Vehicle Registration Tax.

§ 105-570. County Vehicle Registration Tax; shared with municipalities.

(a) A county is considered an authority under Article 51 of this Chapter, and the board of commissioners of that county is considered the board of trustees of the authority

under Article 51, except that the maximum tax that may be levied by a county under this Article is seven dollars ($7.00) per year.

(b) A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system.

(c) Any tax levied under this Article shall, after the receipt of those funds from the Division of Motor Vehicles, be retained or distributed by the county on a per capita basis as it receives those funds as follows:

(1) Pro rata (i) retained by the county based on the population of the county that is not in an incorporated area, and (ii) distributed to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and municipality, the county shall use the most recent annual estimate of population certified by the State Budget Officer.

(2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be distributed does not operate a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection and no distribution shall be made to that municipality.

(3) Notwithstanding subdivision (1) of this subsection, if a county for which funds are to be retained does not operate a public transportation system, the population of that county not in an incorporated area shall be excluded from the calculations of subdivision (1) of this subsection, and the county shall not retain any funds.

If a county that does not retain funds or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate a public transportation system, that county or municipality shall begin retaining or receiving funds beginning the first day of July that is more than 30 days thereafter.

(d) The proceeds of a tax imposed under this Article may be used by that county or municipality only to operate a public transportation system, including financing, constructing, operating, and maintaining that public transportation system. The term "public transportation system" has the same meaning as defined in G.S. 105-506.1.

(e) As used in this section, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General Statutes. As used in this section, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system.

(f) An interlocal agreement under this section may also deal with allocation of funds between a municipality and county for operation by the county of a human services public transportation system within the municipality when the municipality also operates a public transportation system.

(g) This Article is supplemental to Article 51 of this Chapter.

(h) Any tax or tax increase levied under this Article applicable to a motor vehicle sold or leased by a motor vehicle dealer, as defined in G.S. 20-286(11), is only applicable

to a motor vehicle sale or lease made on or after the effective date of the tax or tax increase regardless of the date of submission of a title and registration application for the motor vehicle to the Division of Motor Vehicles. No tax or tax increase levied under this Article applies to a motor vehicle sale or lease made prior to the effective date of the tax or tax increase. (2009-527, s. 4; 2018-42, s. 7.)

§ 105-571: Reserved for future codification purposes.

§ 105-572: Reserved for future codification purposes.

§ 105-573: Reserved for future codification purposes.

§ 105-574: Reserved for future codification purposes.

§ 105-575: Reserved for future codification purposes.

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§ 105-598: Reserved for future codification purposes.

§ 105-599: Reserved for future codification purposes.

SUBCHAPTER X. LOCAL OPTION COUNTY TAXES.

Article 60.

Land Transfer Tax.

§ 105-600: Repealed by Session Laws 2011-18, s. 1, effective March 31, 2011.

§ 105-601: Repealed by Session Laws 2011-18, s. 1, effective March 31, 2011.

§ 105-602: Repealed by Session Laws 2011-18, s. 1, effective March 31, 2011.

§ 105-603: Repealed by Session Laws 2011-18, s. 1, effective March 31, 2011.

§ 105-604: Repealed by Session Laws 2011-18, s. 1, effective March 31, 2011.