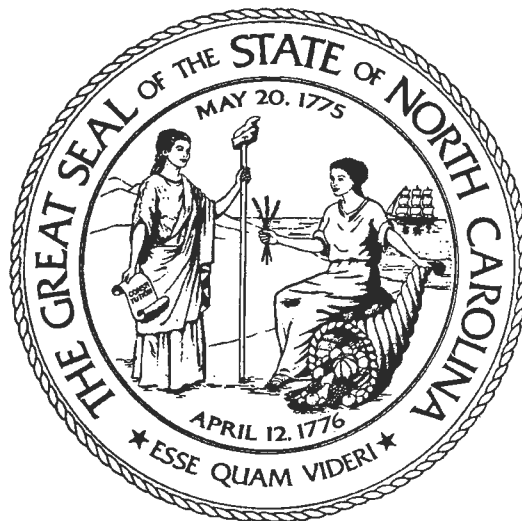


**LEGISLATIVE
RESEARCH COMMISSION**

REVENUE LAWS



**REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1990 SESSION**

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



May 21, 1990

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY (SECOND SESSION,
1990):

The Legislative Research Commission herewith submits to you for your consideration its final report on revenue laws. The report was prepared by the Legislative Research Commission's Revenue Laws Study Committee pursuant to Section 2.1(12) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,



Josephus L. Mavretic
Speaker



Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

1989 - 1990

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Representatives
Josephus L. Mavretic, Cochair

President Pro Tempore of
the Senate
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Sen. Russell Walker

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of the revenue laws and local government revenue sources was authorized by Section 2.1(12) of Chapter 802 of the 1989 Session Laws. That act states that the Commission may consider House Joint Resolution 3 and Senate Bill 1298 in determining the nature, scope, and aspects of the study. House Joint Resolution 3, introduced by Representative Daniel T. Lilley in the 1989 Session, gives the Legislative Research Commission's study of the revenue laws a very broad scope, stating that the "Commission may review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable." In addition, the second edition of Senate Bill 1298 adopted in the 1989 Session recommends a study of "the need for additional local government revenue sources to supplement the property tax, local sales and use taxes, and other existing revenue sources." The relevant portions of Chapter 802, House Joint Resolution 3, and Senate Bill 1298 are included in Appendix A. The Legislative Research Commission grouped this study in its Taxation area under the direction of Representative John William Hurley. The Committee was chaired by Senator Dennis J. Winner and Representative Daniel T. Lilley. The full membership of the Committee and the staff assigned to the Committee are listed in Appendix B of this report.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Revenue Laws Study Committee met three times; the first two meetings were one-day meetings and the third meeting was a two-day meeting. The Committee devoted the majority of its time to fulfilling its mandate to study the impact of the sweeping tax changes made by the 1989 General Assembly. The Committee spent the remainder of its time considering proposals for various smaller substantive changes to the revenue laws and proposals for technical changes to the revenue laws. The Committee deferred discussion of options for additional local revenue sources until after the 1990 legislative session. A list of the speakers that appeared before the Study Committee is provided in Appendix C.

At its first meeting, the Committee reviewed the tax changes made by the 1989 General Assembly, focusing on the changes made by the legislation creating the North Carolina Highway Trust Fund, Chapter 692 of the 1989 Session Laws as amended by Chapters 700, 770, 788, and 799, and the changes made by the Tax Fairness Act of 1989, Chapter 728. The Trust Fund legislation repealed the sales tax on motor vehicles, imposed a titling tax on certificates of title issued for motor vehicles, increased the gasoline tax, increased various fees, and made numerous other changes. The Tax Fairness Act restructured the State's individual income tax as a percentage of federal taxable income and recognized S Corporations effective for the 1989 tax year. At its first meeting, the Committee also reviewed the success of its recommendations to the 1989 Session. Appendix D lists these recommendations and their status.

The Committee devoted most of its second meeting and part of its third meeting to the consideration of problems and concerns resulting from the Highway Trust Fund legislation. The Committee reviewed issues raised by taxpayers, the Department of Revenue, the Division of Motor Vehicles, Committee members, and State agencies affected by the titling tax. The Committee found several areas of the law that need technical change to effect the purposes of the legislation and several areas that need change to make the legislation fair and easier to administer. Legislative Proposal 1 contains the Committee's recommendations concerning the Trust Fund legislation.

The Committee devoted most of its third meeting to the consideration of problems and concerns resulting from the Tax Fairness Act. The Committee reviewed issues raised by the North Carolina Bar Association, the North Carolina Association of Certified Public Accountants, the Department of Revenue, taxpayers, and Committee

members. The Committee discussed problems created by the "speeded-up" recognition of S Corporations, taxpayers' complaints about the repeal of the special exemptions for various medical conditions, whether to adopt the federally indexed personal exemption and standard deduction amounts for the 1990 tax year, and various technical changes that need to be made. The Committee's recommendations related to the Tax Fairness Act are included in Legislative Proposals 2, 3, and 5.

Although the Committee focused on problems and concerns raised by the two major tax acts of the 1989 Session, the Committee also considered several proposals for miscellaneous changes in the revenue laws. The Committee considered whether to allow land owned by a trust to qualify for use-value classification under the property tax laws, whether to make uniform the time for appealing property tax decisions made by different units of local government, whether to increase the bond required for distributors of gasoline and suppliers of diesel fuel, whether to exempt fuel used by a small power producer from sales tax, and whether to modify the taxation of a North Carolina Enterprise Corporation.

The Committee declined to make a recommendation on the first of these smaller issues it considered, deciding that the issue should be referred to the Property Tax Study Commission. The Committee made recommendations on the other issues. Legislative Proposals 4, 6, 7, and 8 contain the Committee's recommendations on these issues.

Finally, the Committee addressed numerous technical changes that need to be made to the revenue laws. Legislative Proposal 9 contains the Committee's recommendations for technical changes.

The Committee expresses its appreciation for the assistance of Ms. Helen Powers, Secretary of Revenue, Mr. Myron Banks, Deputy Secretary of Revenue, the staff of the Department of Revenue, and the staff of the Division of Motor Vehicles. The Committee's task is made easier by the informed comments and suggestions of these tax administrators.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee recommends the following legislation to the 1990 Session of the 1989 General Assembly. The Committee's legislative proposals consist of nine bills. The proposals cover a broad range of topics, including revisions to the new Highway Use Tax that applies when a title is issued for a motor vehicle, transitional adjustments to the Tax Fairness Act of 1989, tax relief for taxpayers with disabled dependents, and numerous technical and clarifying amendments to the revenue laws. Each proposed bill is followed by an explanation of the proposal and a fiscal note indicating the anticipated revenue gain or loss resulting from the proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

PROPOSAL 1 (90-LJX-R15)
THIS IS A DRAFT

Short Title: Highway Use Tax/Sales Tax Changes. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REINSTATE SALES TAX ON CERTAIN VEHICLES AND VEHICLE
3 PARTS, TO MODIFY THE HIGHWAY USE TAX AND THE ALTERNATE GROSS
4 RECEIPTS TAX, AND TO MAKE TECHNICAL CHANGES IN THE LAWS
5 AFFECTED BY THE HIGHWAY TRUST FUND.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-164.3(8b) reads as rewritten:
8 "(8b) '~~Motor vehicle~~' means ~~any vehicle which is~~
9 ~~self-propelled and designed primarily for use~~
10 ~~upon the highways, any vehicle which is~~
11 ~~propelled by electric power obtained from~~
12 ~~trolley wires but not operated upon rails, and~~
13 ~~any vehicle designed to run upon the highways~~
14 ~~which is propelled by a self-propelled~~
15 ~~vehicle, but shall not include any implement~~
16 ~~of husbandry, farm tractor, road construction~~
17 ~~or maintenance machinery or equipment, special~~
18 ~~mobile equipment as defined in G.S. 20-4.01,~~
19 ~~any vehicle designed primarily for use in work~~
20 ~~off the highway, or a manufactured home. a~~
21 ~~vehicle that is designed primarily for use~~
22 ~~upon the highways and is either self-propelled~~
23 ~~or propelled by a self-propelled vehicle, but~~
24 does not include:

- 1 a. A moped as defined in G.S. 20-4.01(27)(d1).
2 b. Special mobile equipment as defined in G.S.
3 20-4.01(44).
4 c. A tow dolly that is exempt from motor vehicle
5 title and registration requirements under G.S.
6 20-51(10) or (11).
7 d. A farm tractor or other implement of
8 husbandry.
9 e. A manufactured home.
10 f. Road construction or road maintenance
11 machinery or equipment."

12 Sec. 2. G.S. 105-164.13(32) reads as rewritten:
13 "(32) Sales of motor vehicles, the ~~separate sales~~
14 sale of a motor vehicle body and a motor
15 vehicle chassis when the body is to be mounted
16 on the chassis, a motor vehicle chassis when a
17 certificate of title has not been issued for
18 the chassis, and the sale of a motor vehicle
19 body mounted on a motor vehicle chassis that
20 temporarily enters the State so the
21 manufacturer of the body can mount the body on
22 the chassis. ~~of the sale.~~"

23 Sec. 3. G.S. 105-164.3(7a) reads as rewritten:
24 "(7a) 'Lease or rental' means ~~the leasing or~~
25 ~~renting of tangible personal property and the~~
26 ~~possession or use thereof by the lessee or~~
27 ~~renter for a consideration without transfer of~~
28 a transfer, for
29 consideration, of the use but not the
30 ownership of property to another for a period
31 of time."

32 Sec. 4. G.S. 105-187.1 reads as rewritten:

33 "§ 105-187.1. Definitions.

34 The following definitions and the definitions in G.S. 105-164.3
35 apply to this Article:

- 36 (1) 'Commissioner' means the Commissioner of Motor
37 Vehicles.
38 (2) 'Division' means the Division of Motor Vehicles,
39 Department of Transportation.
40 (3) 'Long-term lease or rental' means a lease or rental
41 made under a written agreement to lease or rent
42 property to the same person for a period of at
43 least 365 continuous days.

1 (4) 'Short-term lease or rental' means a lease or
2 rental that is not a long-term lease or rental.'

3 Sec. 5. G.S. 105-187.5(b) reads as rewritten:

4 "(b) Rate. The tax rate on the gross receipts ~~of~~ from the
5 short-term lease or rental of a motor vehicle is eight percent
6 (8%), unless the vehicle is leased or rented to the same person
7 for a period of more than 90 continuous days. In that
8 circumstance, the tax is eight percent (8%) for the first 90 days
9 the vehicle is leased or rented to the same person and is three
10 percent (3%) for the remainder of the period during which the
11 vehicle is leased or rented to that person. (8%) and the tax rate
12 on the gross receipts from the long-term lease or rental of a
13 motor vehicle is three percent (3%). The maximum tax in G.S.
14 105-187.3(a) applies to the each lease or rental of a motor
15 vehicle when the vehicle is leased or rented to the same person
16 for more than 90 continuous days. Tax paid by a person from the
17 first day of a continuous lease or rental period applies toward
18 the maximum tax."

19 Sec. 6. G.S. 105-187.3(a) reads as rewritten:

20 "(a) Amount. The rate of the use tax imposed by this Article
21 is three percent (3%) of the retail value of a motor vehicle for
22 which a certificate of title is issued. The tax is payable as
23 provided in G.S. 105-187.4. The tax may not be less than ~~forty~~
24 dollars (\$40.00) twenty dollars (\$20.00) for each motor vehicle
25 for which a certificate of title is issued, unless the issuance
26 of a title for the vehicle is exempt from tax under G.S.
27 105-187.6(a). The tax may not be more than one thousand dollars
28 (\$1,000) for each motor vehicle for which a certificate of title
29 is issued."

30 Sec. 7. G.S. 105-187.7 reads as rewritten:

31 **"§ 105-187.7. Credit for tax paid in another state.**

32 A person who, within 90 days before applying for a certificate
33 of title for a motor vehicle on which the tax imposed by this
34 Article is due, has paid a sales tax, an excise tax, or a tax
35 substantially equivalent to the tax imposed by this Article on
36 the vehicle to a taxing jurisdiction outside this State is
37 entitled to a credit against the tax due under this Article for
38 the amount of tax paid to the other jurisdiction. The credit may
39 not reduce the person's liability under this Article below the
40 minimum ~~forty-dollar (\$40.00) tax. tax set in G.S. 105-187.3."~~

41 Sec. 8. G.S. 105-187.8 reads as rewritten:

42 **"§ 105-187.8. Refund for return of purchased motor vehicle.**

43 When a purchaser of a motor vehicle returns the motor vehicle
44 to the seller of the motor vehicle within 90 days after the

1 purchase and receives a vehicle replacement for the returned
2 vehicle or a refund of the price paid the seller, whether from
3 the seller or the manufacturer of the vehicle, the purchaser may
4 obtain a refund of the privilege tax paid on the certificate of
5 title issued for the returned motor vehicle, less the minimum tax
6 ~~of forty dollars (\$40.00)~~. set in G.S. 105-187.3.

7 To obtain a refund, the purchaser must apply to the Division
8 for a refund within 30 days after receiving the replacement
9 vehicle or refund of the purchase price. The application must be
10 made on a form prescribed by the Commission and must be supported
11 by documentation from the seller of the returned vehicle."

12 Sec. 9. G.S. 105-187.4(b) reads as rewritten:

13 "(b) Sale by Retailer. When a certificate of title for a
14 motor vehicle is issued because of a sale of the motor vehicle by
15 a retailer, the applicant for the certificate of title must
16 attach the bill of sale for the motor vehicle to the application.
17 A retailer who sells a motor vehicle may collect from the
18 purchaser of the vehicle the tax payable upon the issuance of a
19 certificate of title for the vehicle, apply for a certificate of
20 title on behalf of the purchaser, and remit the tax due on behalf
21 of the purchaser. If a check submitted by a retailer in payment
22 of taxes collected under this section is not honored by the
23 financial institution upon which it is drawn because the
24 retailer's account did not have sufficient funds to pay the check
25 or the retailer did not have an account at the institution, the
26 Division may suspend or revoke the license issued to the retailer
27 under Article 12 of Chapter 20 of the General Statutes."

28 Sec. 10. G.S. 20-294 reads as rewritten:

29 "§ 20-294. Grounds for denying, suspending or revoking
30 licenses.

31 A license may be denied, suspended or revoked on any one or
32 more of the following grounds:

- 33 (1) Material misstatement in application for license.
34 (2) Willful and intentional failure to comply with any
35 provision of this Article or Article 15 or the
36 willful and intentional violation of G.S. 20-52.1,
37 20-75, 20-79, 20-82, 20-108, 20-109 or rescission
38 and cancellation of dealer's license and dealer's
39 plates under G.S. 20-110(e) or 20-110(f) or any
40 lawful rule or regulation promulgated by the
41 Division under this Article.
42 (3) Being a motor vehicle dealer, failure to have an
43 established place of business as defined in this
44 Article.

- 1 (4) Willfully defrauding any retail buyer, to the
2 buyer's damage, or any other person in the conduct
3 of the licensee's business.
- 4 (5) Employment of fraudulent devices, methods or
5 practices in connection with compliance with the
6 requirements under the laws of this State with
7 respect to the retaking of motor vehicles under
8 retail installment contracts and the redemption and
9 resale of such motor vehicles.
- 10 (6) Having used unfair methods of competition or unfair
11 deceptive acts or practices.
- 12 (7) Knowingly advertising by any means, any assertion,
13 representation or statement of fact which is
14 untrue, misleading or deceptive in any particular
15 relating to the conduct of the business licensed or
16 for which a license is sought.
- 17 (8) Knowingly advertising a used motor vehicle for sale
18 as a new motor vehicle.
- 19 (9) Conviction of an offense set forth under G.S.
20 20-106, 20-106.1, 20-107, 20-112 while holding such
21 a license or within five years next preceding the
22 date of filing the application; or conviction of a
23 felony involving moral turpitude under the laws of
24 this State, any other state, territory or the
25 District of Columbia or of the United States.
- 26 (10) Submitting a bad check to the Division of Motor
27 Vehicles in payment of highway use taxes collected
28 by the licensee."

29 Sec. 11. G.S. 105-187.5(d) reads as rewritten:

30 "(d) ~~Reporting Administration.~~ The Division shall notify the
31 Secretary of Revenue of a retailer who makes the election under
32 this section. A retailer who makes this election shall report
33 and remit to the Secretary the tax on the gross receipts of the
34 lease or rental of the motor vehicle ~~as if the gross receipts~~
35 ~~were taxable under G.S. 105-164.4(a)(2)~~ . The Secretary shall
36 administer the tax imposed by this section on gross receipts in
37 the same manner as the tax levied under G.S. 105-164.4(a)(2).
38 The administrative provisions and powers of the Secretary that
39 apply to the tax levied under G.S. 105-164.4(a)(2) apply to the
40 tax imposed by this section. In addition, the Division may
41 request the Secretary to audit a retailer who elects to pay tax
42 on gross receipts under this section. When the Secretary
43 conducts an audit at the request of the Division, the Division

1 shall reimburse the Secretary for the cost of the audit, as
2 determined by the Secretary."

3 Sec. 12. G.S. 105-187.6 reads as rewritten:

4 "§ 105-187.6. Exemptions from highway use tax.

5 (a) Full Exemptions.-- The tax imposed by this Article does
6 not apply when a certificate of title is issued as the result of
7 a transfer of a motor vehicle:

8 (1) To the insurer of the motor vehicle under G.S.
9 20-109.1 because the vehicle is a salvage vehicle.

10 (2) To either a manufacturer, as defined in G.S.
11 20-285, or a motor vehicle retailer for the purpose
12 of ~~resale~~, resale other than lease or rental.

13 (3) To the same owner to reflect a change or correction
14 in the owner's name.

15 (4) To the Department of Human Resources to be equipped
16 by the Department for use by the handicapped and
17 then transferred to a handicapped person.

18 (5) To the State or a local board of education when the
19 motor vehicle is a school bus and is to be used for
20 public school transportation.

21 (6) To a local board of education when the motor
22 vehicle is to be used in the driver education
23 program of a public school to train students to
24 drive.

25 (7) By will or intestacy.

26 (b) Partial Exemptions.-- Only the minimum tax imposed by
27 this Article applies when a certificate of title is issued as a
28 the result of ~~the~~ a transfer of a motor vehicle:

29 (1) By a gift between a husband and wife or a parent
30 and child.

31 ~~(2) By will or intestacy.~~

32 ~~(3)~~ (2) By a distribution of marital property as a
33 result of a divorce.

34 ~~(4)~~ (3) To a secured party who has ~~filed~~ a perfected
35 security interest in the motor vehicle ~~with~~
36 ~~the Department of the Secretary of State.~~

37 ~~(5)~~ (4) To a partnership or corporation as an incident
38 to the formation of the partnership or
39 corporation and no gain or loss arises on the
40 transfer under section 351 or section 721 of
41 the Internal Revenue Code, or to a corporation
42 by merger or consolidation in accordance with
43 G.S. 55-110.

1 ~~(6) To the same owner to reflect a change in the~~
2 ~~owner's name.~~

3 (c) Out-of-state Vehicles.-- A maximum tax of one hundred
4 dollars (\$100.00) applies when a certificate of title is issued
5 for a motor vehicle that, at the time of applying for a
6 certificate of title, is and has been titled in another state for
7 at least 90 days."

8 Sec. 13. Article 5A of Chapter 105 of the General
9 Statutes is amended by adding a new section to read:

10 "§ 105-187.11. Transition from sales tax to highway use tax
11 for lessors and renters of motor vehicles.

12 A tax at the rate set in G.S. 105-187.5(b) is levied on the
13 gross receipts derived by a retailer from the lease or rental of
14 a motor vehicle owned by the retailer before October 1, 1989, and
15 leased or rented on or after that date. A retailer subject to
16 this tax may elect to pay highway use tax at the rate set in G.S.
17 105-187.3(a) on a motor vehicle owned by the retailer before
18 October 1, 1989, and leased or rented on or after that date. The
19 retail value of a motor vehicle for which a retailer makes an
20 election under this section is the value of the motor vehicle
21 that would apply under G.S. 105-187.3(b) if the retailer received
22 the vehicle because of a reason other than the sale of the motor
23 vehicle on the date the retailer makes the election.

24 To make the election allowed by this section, a retailer shall
25 complete a form provided by the Division, pay the tax due, and
26 pay the fee set in G.S. 20-85(a)(9). A retailer who makes this
27 election may not receive credit for any tax paid on the motor
28 vehicle under Article 5 of this Chapter or for any tax on gross
29 receipts paid under this Article. The Division shall notify the
30 Secretary of Revenue of a retailer who makes an election under
31 this section."

32 Sec. 14. Section 4 of Chapter 753 of the 1989 Session
33 Laws reads as rewritten:

34 "Sec. 4. ~~These refunds~~ Refunds for taxable periods ending on
35 or before October 1, 1989, shall be drawn from the Highway Fund.
36 Refunds for taxable periods ending after October 1, 1989, shall
37 be drawn from the Highway Fund and the Highway Trust Fund in the
38 same percentage amounts that refunds are drawn from these Funds
39 under G.S. 105-445."

40 Sec. 15. G.S. 20-57(b) reads as rewritten:

41 "(b) The registration card shall be delivered to the owner and
42 shall contain upon the face thereof the name and address of the
43 owner, space for the owner's signature, the registration number
44 assigned to the vehicle, and ~~such~~ a description of the vehicle as

1 determined by the Commissioner, provided that if there are more
2 than two owners the Division may show only two owners on the
3 registration card and indicate that additional owners exist by
4 placing after the names listed "et al." ~~Upon application to the~~
5 ~~Division, the registered owner may acquire additional copies of~~
6 ~~the registration card at a fee of three dollars (\$3.00) each. An~~
7 owner may obtain a copy of a registration card issued in the
8 owner's name by applying to the Division for a copy and paying
9 the fee set in G.S. 20-85."

10 Sec. 16. G.S. 20-85(a) reads as rewritten:

11 "(a) ~~Except as provided in G.S. 20-68, the following fees~~
12 ~~concerning a certificate of title for a motor vehicle and~~
13 ~~registration of a motor vehicle shall be paid to the Division.~~
14 The following fees are imposed concerning a certificate of title,
15 a registration card, or a registration plate for a motor vehicle.
16 These fees are payable to the Division and are in addition to the
17 tax imposed by Article 5A of Chapter 105 of the General Statutes.

- 18 (1) Each application for certificate of title....\$35.00
- 19 (2) Each application for duplicate
- 20 or corrected certificate of title..... 10.00
- 21 (3) Each application of reposessor for
- 22 certificate of title..... 10.00
- 23 (4) Each transfer of registration..... 10.00
- 24 (5) Each set of replacement registration
- 25 plates..... 10.00
- 26 (6) Each application for duplicate registration
- 27 ~~certificate card~~..... 10.00
- 28 (7) Each application for recording supplementary
- 29 lien..... 10.00
- 30 (8) Each application for removing a lien from a
- 31 certificate of title..... 10.00
- 32 (9) Each application for certificate of title
- 33 for a motor vehicle transferred to a
- 34 manufacturer, as defined in G.S. 20-285,
- 35 or a motor vehicle retailer for the purpose
- 36 of resale..... 10.00."

37 Sec. 17. G.S. 20-85.1(c) reads as rewritten:

1 "(c) All funds collected under ~~this section~~ subsection (a)
2 shall be ~~deposited in~~ credited to the Highway Fund. One-half of
3 the funds collected under subsection (b) shall be credited to the
4 Highway Trust Fund and the remaining one-half shall be credited
5 to the Highway Fund."

6 Sec. 18. Sections 1 through 8 of this act shall become
7 effective July 1, 1990. The remaining sections of this act are
8 effective upon ratification.

Explanation of Proposal 1

The 1989 General Assembly established a \$9.1 billion highway program, created the North Carolina Highway Trust Fund to provide a separate source of funds for the program, and raised various taxes and fees to provide revenue for the Trust Fund. As part of the tax and fee increases, the General Assembly increased the motor fuel tax, repealed the 2%, \$300 maximum sales tax on motor vehicles and replaced that tax with a 3%, \$1000 maximum "highway use tax," increased the fee for issuing a certificate of title from \$5.00 to \$35.00, and increased related motor vehicle title and registration fees from varying amounts to \$10.00.

As part of its charge to study the impact of tax changes made in the 1989 Session, the Revenue Laws Study Committee considered the changes made by the Trust Fund legislation and the problems and concerns voiced about these changes by legislators, taxpayers, State departments, and local governmental units. The Committee identified several areas in need of technical amendment as well as several areas that need change to make the new highway use tax fair to taxpayers and easier to administer. Legislative Proposal 1 includes all changes concerning the 1989 Trust Fund legislation that are recommended by the Committee. These changes are described by subject matter below.

-----Reinstate Sales Tax On Mopeds and Tow Dollies (Section 1 of Proposal 1)

The Highway Trust Fund legislation exempted motor vehicles from sales tax and imposed a titling tax, called a "highway use tax," on motor vehicles effective October 1, 1989. Mopeds and tow dollies are included in the sales tax definition of motor vehicle and are therefore exempt from sales tax. A moped is a motor vehicle that cannot go faster than 20 miles an hour and has a motor that does not exceed 50 cubic centimeters. A tow dolly is either an axle with a fifth wheel that is used to link two semi-trailers together behind a truck tractor or a device used to tow disabled vehicles that weigh less than 5,000 pounds.

As motor vehicles, mopeds and tow dollies are currently exempt from sales tax and are theoretically subject to the highway use tax. The highway use tax, however, is payable when a certificate of title is issued for a motor vehicle rather than when a

motor vehicle is purchased. Mopeds and tow dollies are not required to be titled and therefore escape taxation under the highway use tax.

The Revenue Laws Study Committee concluded that the exemption of mopeds and tow dollies from sales tax when the items are not subject to the new highway use tax is an unintended result of the Trust Fund legislation and that mopeds and tow dollies should either be subject to sales tax or be required to be titled and taxed under the highway use tax. Before October 1, 1989, mopeds and tow dollies were subject to sales tax at the rate of 2%, with a \$300 cap.

The Committee decided that it was better to reinstate sales tax on mopeds and tow dollies than to require them to be titled. Accordingly, Section 1 of Proposal 1 imposes sales tax on mopeds and tow dollies at the general State rate of 3% and the local rate of 2% for a combined rate of 5%. The Committee found that mopeds are more like bicycles than cars and trucks and should therefore be subject to the same sales tax rate as bicycles, which is 5%. The Committee further found that a tow dolly is a kind of motor vehicle part and accessory and should therefore be taxed at the same sales tax rate as other motor vehicle parts and accessories, which is 5%. The proposal is effective July 1, 1990.

Like other sales tax revenue, the 3% State sales tax revenue from mopeds and tow dollies will be placed in the General Fund. The local 2% sales tax revenue will be distributed to local units of government.

-----Reinstate Sales Tax on Certain Motor Vehicle Bodies

(Section 2 of Proposal 1)

Under the sales tax law in effect until October 1, 1989, the separate sales of a motor vehicle chassis and a motor vehicle body to be installed on the chassis were considered a single sale in applying the 2%, \$300 maximum sales tax. The Trust Fund legislation exempted motor vehicles as well as motor vehicle bodies from sales tax. The legislation exempted motor vehicle bodies so that motor vehicle bodies and motor vehicle chassis that are sold separately would continue to be treated as a single article and taxed under the highway use tax. The exemption was enacted under the assumption that highway use tax would be collected on the combined chassis and body when a certificate of title was issued for the resulting motor vehicle.

The Revenue Laws Study Committee found that this assumption is mistaken when a motor vehicle body is installed on a chassis that has already been titled. Frequently, for example, a truck body is damaged and the truck owner has a new body installed on

the truck. Because no new certificate of title is required in this circumstance, no highway use tax is due. The truck body, however, has escaped taxation under both the sales tax and the highway use tax.

The Committee therefore recommends that motor vehicle bodies that are installed on titled chassis be subject to sales tax at the general State rate of 3% and the local rate of 2%, for a combined rate of 5%. The Committee decided that a motor vehicle body is a kind of motor vehicle part and accessory and should be taxed at the same rate as other motor vehicle parts and accessories, which is 5%. Section 2 of Proposal 1 imposes sales tax on these motor vehicle bodies effective July 1, 1990.

-----Establish A Uniform Long-Term Leasing Rate

(Sections 3, 4, and 5 of Proposal 1)

As part of the repeal of the sales tax on motor vehicles, the Trust Fund legislation repealed the 2%, \$300 maximum tax on the gross receipts from the lease or rental of a motor vehicle. In its place, the legislation created an optional gross receipts tax that lessors and renters of motor vehicles can elect to pay instead of paying the 3%, \$1,000 maximum highway use tax.

The optional tax is 8% of gross receipts for the first 90 days of a lease or rental to the same person and 3% of gross receipts after that. A lease or rental that extends for more than 90 days is therefore subject to two different rates: 8% for the first 90 days and 3% after that. Tax collected at the 8% rate, however, applies towards the \$1,000 maximum for a lease or rental to the same person. Revenue from the 8% gross receipts tax is credited to the General Fund and revenue from the 3% gross receipts tax is credited to the Trust Fund.

The rationale of establishing different rates for rentals and leases of different lengths of time is that a long-term lease is similar to the purchase of a vehicle and should therefore be taxed at the same rate as an actual purchase of a vehicle. A vehicle purchased by someone who is not going to lease or rent the vehicle is subject to the 3%, \$1,000 maximum highway use tax.

The Revenue Laws Study Committee heard numerous complaints about the two-tiered tax rate on long-term leases and rentals from representatives of the long-term leasing industry. The representatives explained that the two-tiered rate was costly to administer and was forcing lessors to pay the highway use tax rather than exercise the option of paying on gross receipts.

The Revenue Laws Study Committee determined that the concerns of the leasing industry were valid and that a 3% uniform long-term leasing rate could be established. To offset any reduction in revenue from decreasing the rental rate for the first 90 days of a long-term lease from 8% to 3%, the Committee recommends that the 8% rate apply to all leases or rentals for less than a year and that the 3% rate apply to all leases or rentals made under a contract to lease or rent a motor vehicle for at least one year.

Sections 3, 4, and 5 of Proposal 1 implement this recommendation. Section 3 amends the definition of lease or rental so the definition can be applied without redundancy when referring to a long-term lease or rental and a short-term lease or rental. Section 4 adds definitions of "long-term lease or rental" and "short-term lease or rental." Section 5 rewrites the statute that sets out the alternate gross receipts tax to set the rate at 8% for a short-term lease or rental and 3% for a long-term lease or rental. The recommendation is effective July 1, 1990.

As recommended, a long-term lease or rental of a motor vehicle is a lease or rental made under a written contract to lease or rent a vehicle to the same person for at least one year. A short-term lease or rental is any other lease or rental. Thus, if a vehicle is leased under a written three-year lease, the tax rate on the gross receipts for the entire period of the lease is 3%. Similarly, if a vehicle is leased under a written two-year lease and the lease is terminated before the end of the first year of the lease, the tax rate for the entire period the vehicle was actually leased is nevertheless 3%. If a vehicle is rented on a month-to-month basis, for a fixed period of less than 1 year, or on the basis of an oral agreement, the tax rate on the gross receipts for the entire period of the rental is 8%.

-----Lower the Minimum Highway Use Tax From \$40 To \$20

(Sections 6, 7, and 8 of Proposal 1)

The Trust Fund legislation repealed the 2%, \$300 maximum sales tax on motor vehicles and replaced it with the highway use tax. The highway use tax is 3% of the retail value of a motor vehicle but cannot be less than \$40.00 nor more than \$1,000. In addition to the \$40.00 minimum highway use tax, a titling fee of \$35.00 plus a registration plate fee of \$10.00 must be paid when a certificate of title is issued for a newly-acquired motor vehicle.

Members of the Revenue Laws Study Committee received correspondence from constituents who are concerned about the high minimum tax, particularly when it is applied to motor vehicles of low value. The Committee debated the issue and

determined that the minimum tax is very regressive, particularly when coupled with the \$35.00 fee, and that it is not fair to collect the same amount of tax on a vehicle valued at \$1,300 as on a vehicle valued at \$250.00.

The Committee therefore recommends that the minimum tax be lowered from \$40.00 to \$20.00. The Committee debated eliminating the minimum tax so that all motor vehicles would be taxed under the highway use tax on the basis of value only. The Committee declined to recommend eliminating the minimum tax out of concern for the loss of Trust Fund revenue resulting from the recommendation.

Sections 6, 7, and 8 of Proposal 1 implement this recommendation. Section 6 lowers the minimum tax to \$20.00 and Sections 7 and 8 change references to the amount of the minimum tax. This recommendation is effective July 1, 1990.

Under this recommendation, motor vehicles ranging in value up to \$690.00 are all subject to the same \$20.00 minimum tax. Above this value, the amount of tax increases because 3% of the value is more than \$20.00. The recommendation does not affect the \$35.00 title fee.

-----Make Submission of Bad Checks In Payment Of The Highway Use Tax Grounds For Suspending Or Revoking A Dealer's License

The highway use tax imposed by the Trust Fund legislation must be paid before a certificate of title is issued for a motor vehicle. Because many motor vehicle dealers apply for a certificate of title for vehicles bought from them, the legislation allows a dealer to collect the highway use tax payable on a motor vehicle and remit the tax to the Division of Motor Vehicles when the dealer applies for a title on behalf of the buyer of the motor vehicle. The Division of Motor Vehicles has received approximately \$15,000 in bad checks from dealers in payment of the highway use tax.

The Division asked the Committee to consider giving the Division a remedy for the submission of bad checks by dealers. Under current law, the Division can remove the registration plate from any vehicle for which a bad check was given in payment of the highway use tax. The Division noted that it does not seem fair to remove the plate from a vehicle when the owner of the vehicle paid the tax to a dealer and the dealer submitted a bad check to the Division.

In response to this request, the Committee recommends that the Division of Motor Vehicles be given the authority to revoke or suspend a motor vehicle dealer's license if the dealer submits a bad check to the Division in payment of the highway use tax. Sections 9 and 10 of Proposal 1 implement this recommendation.

Section 9 inserts a sentence in the highway use tax statutes that alerts those who collect the tax of the power to suspend or revoke a dealer's license. Section 10 amends the statute that lists the grounds for adverse action on various licenses concerning the sale of motor vehicles to add submitting bad checks in payment of the highway use tax as a grounds for adverse action. The recommendation is effective upon ratification.

-----Give The Department of Revenue The Authority to Audit Motor Vehicle Lessors and Renters Who Elect To Pay On Gross Receipts

(Section 11 of Proposal 1)

The gross receipts tax on motor vehicles is now an elective alternate to the highway use tax and is set out in the highway use tax statutes. The Division of Motor Vehicles collects the highway use tax, but the Department of Revenue collects the gross receipts tax. Under prior law, the gross receipts tax on motor vehicles was part of the sales tax law and was administered by the Department of Revenue.

Because the statutes that levy the gross receipts tax are now part of the statutes that are administered by the Division of Motor Vehicles rather than the Department of Revenue, the question arose of whether the Department's audit authority extends to those who pay the gross receipts tax to the Department. To resolve this question, the Committee recommends that the Department of Revenue be given the same authority to audit those who pay the gross receipts tax that it has to audit those who remit sales and use taxes. The Committee further recommends that the Division of Motor Vehicles be given specific authority to request the Department of Revenue to conduct an audit of a person who pays the gross receipts tax. Section 11 of Proposal 1 implements this recommendation.

-----Exempt Various Transfers of Motor Vehicles From The Highway Use Tax

(Section 12 of Proposal 1)

The Revenue Laws Study Committee heard numerous complaints from taxpayers about the imposition of the highway use tax on various transfers of motor vehicles. Taxpayers complained most about transfers that occur for a reason other than the sale of the vehicle. The most frequent complaint was lodged against transfers to the same owner because of a name change. The second most frequent complaint was about transfers to a beneficiary upon the death of the former owner.

Unlike the former sales tax on motor vehicles, which was payable only when a motor vehicle was sold, the highway use tax is payable every time a certificate of title is

issued for a motor vehicle. A title is issued every time a motor vehicle is transferred to a new owner or the owner changes names, regardless whether any cash changes hands in the transfer.

In addition to complaints about the application of the tax to circumstances that do not involve a sale, the Committee heard concerns raised by the Department of Human Resources and the Department of Public Education about the tax imposed on vehicles purchased by each Department or by local governmental units. The Department of Human Resources voiced concern about the tax imposed on vans equipped for the handicapped, and the Department of Public Instruction voiced concern about the tax imposed on public school buses and vehicles used in driver education programs in the public schools.

In response to these complaints and concerns, the Committee recommends that the following motor vehicles be exempt from the highway use tax:

1. Vehicles for which a new title is issued because the owner changed names.
2. Vehicles transferred to the Department of Human Resources to be equipped for use by the handicapped and then transferred to a handicapped person.
3. Public school buses.
4. Vehicles used in the driver education program of a public school.
5. Vehicles transferred as a result of the death of the former owner.

Currently, the vehicles described in items 1 and 5 are subject to only the minimum \$40.00 tax. The other vehicles are subject to tax at the rate of 3%, with a \$1,000 cap.

-----Election To Pay Highway Use Tax on October 1, 1989, Inventory
(Section 13 of Proposal 1)

The Highway Trust Fund legislation repealed the sales tax on motor vehicles effective October 1, 1989, imposed a titling tax on motor vehicles, and gave lessors and renters of motor vehicles an option of either paying the new 3% titling tax when purchasing a vehicle for lease or rental or waiving payment of the titling tax and collecting a tax on the lease or rental receipts. The law did not give lessors and renters an option of paying titling tax on vehicles owned on the effective date of the change.

Representatives of the leasing and rental industry brought this subject to the attention of the Revenue Laws Study Committee and pointed out that the failure to extend the same option to inventory owned on October 1 creates bookkeeping problems for lessors and renters and prevents them from having a uniform policy concerning the tax. In response to this, the Committee developed Section 13 of Proposal 1.

Section 12 allows lessors and renters of motor vehicles to elect to pay the new 3% highway use tax on motor vehicles owned by them on October 1, 1989, the effective date of the tax change. In doing so, it gives them the same option on their existing inventory that they have on vehicles purchased since October 1, 1989.

A lessor or renter who elects to pay the titling tax under the proposal will pay tax based on the retail value of the vehicle. The retail value for these motor vehicles is the wholesale book value of the vehicle as determined in accordance with schedules of value adopted by the Commissioner of Motor Vehicles. The retail value may be less than or greater than the lessor's or renter's book value of the vehicle, which is based on cost less depreciation.

-----Make Technical Corrections To Laws Affected By The Trust Fund Legislation
(Sections 12, 14, 15, 16, and 17 of Proposal 1)

The Committee identified several technical changes that need to be made as a result of the Trust Fund changes concerning taxes and fees. Sections 12, 14, 15, 16, and 17 of Proposal 1 make the necessary technical changes. The changes:

1. Make it clear that a motor vehicle sold for lease or rental is not exempt from the highway use tax under G.S. 105-187.6(a)(2). This clarification is necessary because the sales tax definition of "sale," which applies to the titling tax, includes lease or rental.
2. Delete an inaccurate reference in G.S. 105-187.6(b)(4) to the filing of a security interest in a motor vehicle with the Secretary of State. Security interests in most motor vehicles are perfected by filing with the Division of Motor Vehicles.
3. Allocate gas tax refunds made to the Cherokee Tribe between the Highway Fund and the Highway Trust Fund in accordance with the 75%/25% split for other refunds.
4. Delete unnecessary and inaccurate language in G.S. 20-57(b) concerning the fee imposed for issuing a copy of a registration card for a motor vehicle. G.S. 20-85 sets the fee at \$10.00.
5. Delete unnecessary and inaccurate language in G.S. 20-85 concerning an exception to the fee schedule set in 20-85. G.S. 20-68 does not contain an exception to the fee schedule in 20-85 and has not since 1975.

Fiscal Report
Legislative Proposal #1
(Highway Use Tax/Sales Tax Changes)

April 23, 1990

Legislative Proposal #1 incorporates a series of recommendations. The fiscal effect of each recommendation and whether it impacts the State General Fund and/or the Highway Trust Fund is listed below.

GENERAL FUND PROPOSALS

<u>Recommendation</u>	<u>Fiscal Effect FY91</u>
Reinstate Sales Tax on Mopeds & Tow Dollies	+ \$ 27,785
Reinstate Sales Tax on Certain Motor Vehicle Bodies	+ \$400,000
Establish a Uniform Long-Term Leasing Rate	- \$ 375,000

HIGHWAY TRUST FUND PROPOSALS

Lower the Minimum Highway Use Tax from \$40 to \$20	- \$ 11.8 million
Exempt Various Transfers of Motor Vehicles from the Highway Use Tax	
1. Transfers due to name changes	- \$ 475,000
2. Vehicle transfers from the Department of Human Resources to the handicapped	- \$ 10,000
3. Public school buses	- \$1,275,000
4. Driver education vehicles in public schools	- \$ 223,380
5. Transfers due to death	- \$1,400,000
TOTAL	
	<hr/>
	- \$3,383,380

1 corporation's last taxable period as an S
2 Corporation shall be treated as incurred by the
3 shareholder on the last day of any post-termination
4 transition period.

5 (2) The aggregate amount of losses and deductions taken
6 into account by a shareholder pursuant to
7 subdivision (1) of this subsection may not exceed
8 the adjusted basis of the shareholder in the stock
9 of the corporation (determined in accordance with
10 G.S. 105-131.3 at the close of the last day of any
11 post-termination transition period and without
12 regard to this subsection).

13 (e) Each shareholder's pro rata share of the reduction of an S
14 Corporation's income because of the allowance of a carryforward
15 loss to the S Corporation under this subsection shall be taken
16 into account by the shareholder as a transitional adjustment
17 under G.S. 105-134.7. Notwithstanding the provisions of
18 subsection (a) of this section, an S Corporation that sustained a
19 net economic loss in a taxable year beginning before January 1,
20 1989, may carry the loss forward to a taxable year beginning on
21 or after January 1, 1989, and before July 1, 1990, and may deduct
22 the loss in that year to the extent it could have carried forward
23 and deducted the loss pursuant to G.S. 105-130.5(b)(4) and G.S.
24 105-130.8 if the S Corporation Income Tax Act had not become
25 effective until taxable years beginning on or after July 1, 1990.
26 Any loss carryforward allowed as a deduction by this subsection
27 may not exceed the S Corporation's net income, as defined in the
28 Code subject to the adjustments provided in G.S. 105-130.5 other
29 than the adjustment provided in G.S. 105-130.5(b)(4), and is
30 subject to the limitations provided in G.S. 105-131.4(b) and (d).
31 Notwithstanding the provisions of G.S. 105-131.3, the basis of a
32 shareholder in the stock of an S Corporation shall be adjusted
33 for the shareholder's pro rata share of the carryforward loss
34 allowed as a deduction to the S Corporation under this
35 subsection. Notwithstanding the provisions of G.S.
36 105-131.6(c)(2), the accumulated adjustments account maintained
37 for each resident shareholder shall be adjusted for the
38 shareholder's pro rata share of the carryforward loss allowed as
39 a deduction to the S Corporation under this subsection."

40 Sec. 2. G.S. 105-151.19 reads as rewritten:

41 "§ 105-151.19. Credit for North Carolina dividends.

42 There is allowed as a credit against the tax imposed by this
43 Division an amount equal to six percent (6%) of the amount of
44 dividends received by the taxpayer during the taxable year from

1 stock issued by a qualified corporation, up to a maximum credit
2 of three hundred dollars (\$300.00) per taxpayer for the taxable
3 year. A corporation is a qualified corporation if fifty percent
4 (50%) or more of the dividends from stock issued by the
5 corporation would be deductible by a corporate shareholder for
6 the taxable year under the provisions of G.S. 105-130.7(1), (2),
7 (3), (3a), or (5) except that no credit shall be allowed for
8 dividends ~~issued with respect to~~ deemed distributable from
9 earnings for a taxable period during which the corporation is an
10 S Corporation subject to the provisions of Division I-S of this
11 Article.

12 This credit applies only with respect to dividends received
13 while the taxpayer was a resident of this State. In the case of
14 a married couple filing a joint return where both spouses
15 received dividends during the taxable year, the three hundred
16 dollar (\$300.00) maximum applies separately to each spouse's
17 dividends for a potential total credit of six hundred dollars
18 (\$600.00) for the couple. This credit may not exceed the amount
19 of tax imposed by this Division for the taxable year reduced by
20 the sum of all credits allowed under this Division, except
21 payments of tax made by or on behalf of the taxpayer."

22 Sec. 3. Notwithstanding any other provision of law,
23 with respect to dividends received by a taxpayer from an S
24 Corporation and included in the taxpayer's North Carolina taxable
25 income under Division II of Article 4 of Chapter 105 of the
26 General Statutes for the taxpayer's 1989 taxable year, if (i) the
27 dividends were distributed during the corporation's 1988 taxable
28 year which began on or after January 2, 1988, and ended on or
29 after January 1, 1989, or (ii) the dividends were distributed
30 before October 1, 1989, then the three hundred dollar (\$300.00)
31 limitation in G.S. 105-151.19 shall not apply and any credit
32 otherwise allowable with respect to these dividends shall be
33 allowed without regard to the three hundred dollar (\$300.00)
34 limitation. No additional credit is allowed under G.S.
35 105-151.19 for dividends distributed on or after October 1, 1989,
36 from an S Corporation during its 1989 taxable year, to the extent
37 the taxpayer's total credit under G.S. 105-151.19 for the taxable
38 year exceeds three hundred dollars (\$300.00).

39 Sec. 4. G.S. 105-134.6(b) reads as rewritten:

40 "(b) Deductions. The following deductions from taxable income
41 shall be made in calculating North Carolina taxable income, to
42 the extent each item is included in gross income:

43 (1) Interest upon the obligations of (i) the United
44 States or its possessions, (ii) this State or a

- 1 political subdivision of this State, or (iii) a
2 nonprofit educational institution organized or
3 chartered under the laws of this State.
- 4 (2) Interest upon obligations and gain from the
5 disposition of obligations to the extent the
6 interest or gain is exempt from tax under the laws
7 of this State.
- 8 (3) Benefits received under Title II of the Social
9 Security Act and amounts received from retirement
10 annuities or pensions paid under the provisions of
11 the Railroad Retirement Act of 1937.
- 12 (4) Any amount not to exceed one thousand five hundred
13 dollars (\$1,500) received by the taxpayer during
14 the taxable year as compensation for the
15 performance of duties as a member of the North
16 Carolina organized militia, the national guard as
17 defined in G.S. 127A-3.
- 18 (5) Refunds of State, local, and foreign income taxes
19 included in the taxpayer's gross income.
- 20 (6) a. An amount, not to exceed four thousand dollars
21 (\$4,000), equal to the sum of the amount
22 calculated in subparagraph b. plus the amount
23 calculated in subparagraph c.
- 24 b. The amount calculated in this subparagraph is
25 the amount received during the taxable year
26 from one or more state, local, or federal
27 government retirement plans.
- 28 c. The amount calculated in this subparagraph is
29 the amount received during the taxable year
30 from one or more retirement plans other than
31 state, local, or federal government retirement
32 plans, not to exceed a total of two thousand
33 dollars (\$2,000) in any taxable year.
- 34 d. In the case of a married couple filing a joint
35 return where both spouses received retirement
36 benefits during the taxable year, the maximum
37 dollar amounts provided in this subdivision
38 for various types of retirement benefits apply
39 separately to each spouse's benefits.
- 40 (7) The amount of inheritance tax attributable to an
41 item of income in respect of a decedent required to
42 be included in gross income under the Code,
43 adjusted as provided in G.S. 105-134.5, 105-134.6,
44 and 105-134.7. The amount of inheritance tax

1 attributable to an item of income in respect of a
2 decedent is (i) the amount by which the inheritance
3 tax paid under Article 1 of this Chapter on
4 property transferred to a beneficiary by a decedent
5 exceeds the amount of inheritance tax that would
6 have been payable by the beneficiary if the item of
7 income in respect of a decedent had not been
8 included in the property transferred to the
9 beneficiary by the decedent, (ii) multiplied by a
10 fraction, the numerator of which is the amount
11 required to be included in gross income for the
12 taxable year under the Code, adjusted as provided
13 in G.S. 105-134.5, 105-134.6, and 105-134.7, and
14 the denominator of which is the total amount of
15 income in respect of a decedent transferred to the
16 beneficiary by the decedent. For an estate or
17 trust, the deduction allowed by this subdivision
18 shall be computed by excluding from the gross
19 income of the estate or trust the portion, if any,
20 of the items of income in respect of a decedent
21 that are properly paid, credited, or to be
22 distributed to the beneficiaries during the taxable
23 year.

24 (8) The amount by which the taxpayer's mortgage
25 interest deduction under the Code was reduced
26 pursuant to section 163(g) of the Code."

27 Sec. 5. G.S. 105-134.7(a) reads as rewritten:

28 "(a) The following adjustments to taxable income shall be made
29 in calculating North Carolina taxable income:

- 30 (1) Amounts that were included in the basis of property
31 under federal tax law but not under State tax law
32 before January 1, 1989, shall be added to taxable
33 income in the year the taxpayer disposes of the
34 property.
- 35 (2) Amounts that were included in the basis of property
36 under State tax law but not under federal tax law
37 before January 1, 1989, shall be deducted from
38 taxable income in the year the taxpayer disposes of
39 the property.
- 40 (3) Amounts that were recognized as income under
41 federal law but not under State law due to a
42 taxpayer's use of the installment method set out in
43 G.S. 105-142(f) prior to January 1, 1989, shall be
44 added to taxable income in the taxpayer's first

- 1 taxable year beginning on or after January 1, 1989.
2 Amounts that were recognized as income under State
3 law but not under federal law due to a taxpayer's
4 use of a different installment method prior to
5 January 1, 1989, shall be deducted from taxable
6 income in the taxpayer's first taxable year
7 beginning on or after January 1, 1989.
- 8 (4) Losses in the nature of net economic losses
9 sustained in any or all of the five taxable years
10 preceding the taxpayer's first taxable year
11 beginning on or after January 1, 1989, arising from
12 business transactions, business capital, or
13 business property, may be deducted from taxable
14 income subject to the limitations contained in
15 former G.S. 105-147(9)a., c., and d. (repealed).
- 16 (5) The amount of any net operating loss for a taxable
17 year beginning on or after January 1, 1989, carried
18 back to a taxable year beginning before January 1,
19 1989, pursuant to section 172 of the Code may be
20 deducted from taxable income in the taxable year
21 following the taxable year for which the loss
22 occurred.
- 23 (6) A loss or deduction that was incurred or paid and
24 deducted from State taxable income in a taxable
25 year beginning before January 1, 1989, and is
26 carried forward and deducted in a taxable year
27 beginning on or after January 1, 1989, under the
28 Code shall be added to taxable income.
- 29 (7) The transitional adjustments provided in Division
30 I-S of this Article shall be made with respect to a
31 shareholder's pro rata share of S Corporation
32 income.
- 33 (8) Notwithstanding the provisions of subdivision (2)
34 of this subsection, in the case of property that
35 the taxpayer elected to expense under section 179
36 of the Code for a taxable year beginning on or
37 before December 31, 1988, the taxpayer shall deduct
38 an allowance for depreciation equal to the amount
39 that would have been allowed under former G.S.
40 105-147(12)(repealed) each year until the amount
41 deductible for depreciation is equal to the amount
42 deducted under section 179 of the Code. Amounts
43 deductible under this subdivision may not be
44 deducted from taxable income under subdivision (2)

1 of this subsection in the year the taxpayer
 2 disposes of the property."

3 Sec. 6. G.S. 105-151.18 reads as rewritten:

4 "§ 105-151.18. Credit for the disabled.

5 (a) Disabled Taxpayer. A person taxpayer who (i) is retired on
 6 disability, (ii) at the time of retirement, was permanently and
 7 totally disabled, disabled as defined in section 22 of the Code,
 8 and (iii) claims a federal income tax credit under section 22 of
 9 the Code for the taxable year, is allowed as a credit against the
 10 tax imposed by this Division an amount equal to one-third of the
 11 amount of the federal income tax credit for which he the taxpayer
 12 is eligible under section 22 of the Code.

13 (b) Disabled Dependent. If a dependent for whom a taxpayer is
 14 allowed an exemption under the Code is permanently and totally
 15 disabled, the taxpayer is allowed a credit against the tax
 16 imposed by this Division. In order to claim the credit allowed
 17 by this subsection, the taxpayer must attach to the tax return on
 18 which the credit is claimed a statement from a physician or local
 19 health department certifying that the dependent for whom the
 20 credit is claimed is permanently and totally disabled, as defined
 21 in this section. The amount of the credit allowed shall be
 22 determined as follows: For a taxpayer whose North Carolina
 23 adjusted gross income does not exceed the appropriate income
 24 amount provided in the table below, based on the taxpayer's
 25 filing status, the credit allowed is the appropriate initial
 26 credit provided in the table below. For a taxpayer whose North
 27 Carolina adjusted gross income does exceed the appropriate income
 28 amount, the credit allowed is the appropriate initial credit
 29 reduced by five dollars (\$5.00) for every one thousand dollars
 30 (\$1,000) by which the taxpayer's North Carolina adjusted gross
 31 income exceeds the appropriate income amount.

32

<u>Filing Status</u>	<u>Initial Credit</u>	<u>Income Amount</u>
<u>Head of Household</u>	<u>\$ 80.00</u>	<u>\$16,000</u>
<u>Surviving Spouse or</u> <u>Joint Return</u>	<u>\$100.00</u>	<u>\$20,000</u>
<u>Married Filing Separately</u>	<u>\$ 50.00</u>	<u>\$10,000</u>

41

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

- 1 (1) North Carolina Adjusted Gross Income. Adjusted
2 gross income, as determined under the Code,
3 adjusted as provided in G.S. 105-134.6 and G.S.
4 104-134.7.
- 5 (2) Permanently and Totally Disabled. Unable to engage
6 in any substantial gainful activity by reason of
7 any medically determinable physical or mental
8 impairment that can be expected to result in death
9 or that has lasted or can be expected to last for a
10 continuous period of not less than 12 months.
- 11 (d) Limitations. A nonresident or part-year resident who
12 claims the credit allowed by this section shall reduce the amount
13 of the credit by multiplying it by the fraction calculated under
14 G.S. 105-134.5(b) or (c), as appropriate. The credit allowed
15 under this section may not exceed the amount of tax imposed by
16 this Division for the taxable year reduced by the sum of all
17 credits allowed under this Division, except payments of tax made
18 by or on behalf of the taxpayer."
- 19 Sec. 7. Section 1 of this act is effective
20 retroactively for taxable years beginning on or after January 1,
21 1989, and shall expire for taxable years beginning on or after
22 July 1, 1990. Section 6 of this act is effective for taxable
23 years beginning on or after January 1, 1990. The remainder of
24 this act is effective retroactively for taxable years beginning
25 on or after January 1, 1989.

Explanation of Proposal 2

On August 7, 1989, the General Assembly enacted a sweeping reform of the State's personal income tax system effective for taxable years beginning on or after January 1, 1989. This legislation, known as the Tax Fairness Act of 1989, revised the Individual Income Tax Act by using federal taxable income as the starting point for determining an individual's North Carolina taxable income. The Tax Fairness Act is by far the most comprehensive revision of the Individual Income Tax Act since it was enacted in its modern form in the 1930s. The new legislation affects virtually every step required in calculating an individual's State income tax and indirectly affects numerous related tax statutes.

The Tax Fairness Act, originally introduced in the 1987 General Assembly, was studied and debated by the 1987 General Assembly and by two legislative committees between the 1987 and 1989 Sessions, the Revenue Laws Study Committee and the Tax Fairness Study Commission. In 1989, the legislation was again studied, debated, and revised by the General Assembly. The changes made by the Tax Fairness Act were so extensive that, despite the scrutiny it received from the General Assembly, the Department of Revenue, tax professionals, and the public, there were still some tax consequences of the rewrite that were not discovered until after its enactment. The Revenue Laws Study Committee was directed to study the impact of the tax law changes enacted in 1989. The Department of Revenue, the North Carolina Bar Association, the North Carolina Association of Certified Public Accountants, legislators, and members of the public all contacted the committee with suggestions for improvements to the new law to better enable it to achieve its goals of fairness, simplicity, and efficiency. A number of these suggestions were adopted and included in Legislative Proposal 2.

----Subchapter S Corporations

Since 1958, federal income tax law has allowed certain corporations having fewer than 35 shareholders to elect to be taxed as "Subchapter S Corporations." Under the S Corporation option, items of income and loss are not taxable to the corporation but are passed through to the shareholders in the same way items of income and loss of a partnership are taxed to the individual partners. In 1988, the General Assembly

enacted legislation to provide that the State would allow S Corporation tax treatment for federal S Corporations. This legislation was to become effective for taxable years beginning on or after July 1, 1990. Then, in 1989, the Tax Fairness Act incorporated the 1988 S Corporation legislation into its provisions with a new effective date of January 1, 1989. After the end of the 1989 Session, members of the Revenue Laws Study Commission and other legislators were contacted about tax problems caused by the acceleration of the effective date of the S Corporation legislation by the Tax Fairness Act of 1989. The January 1, 1989, effective date set by the Tax Fairness Act, ratified in August 1989, created unanticipated tax consequences for actions that were taken before the act was ratified, and eliminated the planning period allowed by the original July 1, 1990, effective date of the S Corporation law.

One problem of particular concern is the disallowance of carryovers of pre-1989 losses. The original S Corporation law provided that net economic losses sustained before the effective date of the act could not be carried forward to offset income in later tax years. This provision was agreed upon by all interested parties in 1988; the impact of the provision on taxpayers was mitigated somewhat by the delayed effective date, which gave taxpayers time to plan for the change. This planning period was lost when the Tax Fairness Act changed the effective date to January 1, 1989, causing unanticipated tax increases for numerous small businesses in North Carolina, including many farmers.

In order to provide relief for taxpayers in this situation, the Revenue Laws Study Committee adopted Section 1 of Legislative Proposal 2, which would restore to taxpayers the delayed effective date for the disallowance of loss carryforwards. Pre-1989 net economic losses could be carried forward by the corporation and used to offset the corporation's income in 1989 and 1990, and this offset would be passed through to the shareholders in those tax years. The proposal would be retroactive to the 1989 tax year, allowing affected taxpayers to file amended returns for that year.

The Revenue Laws Study Committee also studied a similar problem, a one-time "double taxation" of certain distributions made by S Corporations in 1989. For an S Corporation that does not use the calendar year as its tax year, certain earnings for the corporation's 1988 tax year were taxed at the corporate level under the old law, because the corporation's tax year started before 1989, and also at the individual level under the new law, because the earnings, distributed as dividends, were included in the shareholder's 1989 taxable income. For calendar year corporations that made distributions of 1988 earnings in early 1989, the earnings were taxed at the corporate

level under the old law and then distributed as dividends when the then current law provided that the shareholder would receive a full dividend deduction. After the distribution was made, the new law made these dividends taxable with only a limited tax credit, subject to a \$300 maximum, allowed. The change in the law thus subjected these dividends to unanticipated "double taxation."

In developing a proposal to provide relief in this situation, the Revenue Laws Study Committee considered fairness, ease of administration, and fiscal impact. The proposal selected by the committee, Sections 2 and 3 of Legislative Proposal 2, provides a full tax credit, without any maximum, for distributions from pre-1989 earnings made before October 1, 1989, or made by a fiscal year corporation during its 1988 tax year. The use of a credit rather than a deduction makes the one-time relief easier for the Department of Revenue to administer and easier for taxpayers to comply with. The proposal balances fiscal and fairness considerations by retaining the 6% credit rate. The proposal would be retroactive to the 1989 tax year, allowing affected taxpayers to file amended returns.

-----Mortgage Interest Deduction

Section 25 of the Internal Revenue Code provides that first-time home buyers who do not exceed certain income and sales price levels may obtain a Mortgage Credit Certificate (MCC). The MCC enables the homeowner to take a federal tax credit of up to 25% of his or her annual mortgage interest payments. The portion of the interest that is taken as a credit may not also be taken as a deduction in calculating federal taxable income. North Carolina does not allow a tax credit for MCC holders; it does use federal taxable income as the starting point in calculating North Carolina taxable income. As a result, an MCC holder whose mortgage interest deduction under the Code was reduced by the amount of the federal credit will not be able to deduct the full amount of the mortgage interest for North Carolina tax purposes. When it enacted the Tax Fairness Act of 1989, the General Assembly did not intend to disallow full deduction of interest for MCC holders, who tend to be lower income taxpayers; the disallowance occurred as a result of an oversight. In order to correct this oversight, the Revenue Laws Study Committee adopted Section 4 of Legislative Proposal 2, which would allow a taxpayer to deduct from taxable income the amount of his or her mortgage interest that was not deducted under the Code due to the taxpayer's use of the mortgage interest credit. The proposal would be retroactive to the 1989 tax year, allowing affected taxpayers to file amended returns for that year.

-----Depreciation Transition Adjustment

In rewriting the Individual Income Tax Act to use federal taxable income as the starting point for calculating a taxpayer's North Carolina income tax, the Tax Fairness Act of 1989 provided a number of transitional adjustments to allow taxpayers to take into account pre-1989 differences between the State income tax law and the Internal Revenue Code. Where these differences resulted in a different basis in property for State tax purposes and federal tax purposes, the new law provided that the taxpayer would take the difference into account when the property was disposed of. For example, where the property's basis was higher for federal income tax purposes than for State income tax purposes, the difference would be recognized as additional gain when the taxpayer disposed of the property. In the same way, where the basis was higher for State tax purposes, less gain would be recognized under State tax law when the taxpayer disposed of the property.

The Revenue Laws Study Committee was informed that some taxpayers were displeased with the latter transitional adjustment in the case of property that had been expensed under Section 179 of the Code before the 1989 tax year. Section 179 allows a taxpayer to elect to treat the cost of certain property as an expense that is not chargeable to capital account and may be deducted in the year the property is placed in service. Before 1989, North Carolina did not allow such an election; rather than deducting the cost of the property in the year it was placed in service, the taxpayer was allowed depreciation deductions under former G.S. 105-147(12), spread out over a number of years. For property that was expensed under Section 179 before 1989 and was being depreciated for State tax purposes, the Tax Fairness Act provided that the State depreciation deductions would be discontinued beginning in 1989 and the difference in basis for State and federal tax purposes would result in lower State taxable income in the year the property was disposed of. Thus, the taxpayer was required to postpone the benefit of the depreciation deductions that would have been allowed in 1989 and the years following under the prior law.

The Revenue Laws Study Committee adopted Section 5 of Legislative Proposal 2 to address this situation. Section 5 would require a taxpayer who expensed property before 1989 to take the depreciation deductions that would have been allowable under the former State law. For all other situations that result in a difference in basis, the difference would continue to be taken into account when the taxpayer disposes of the property.

-----Disabled Dependents Tax Credit

Until the 1989 tax year, North Carolina provided an additional \$1,100 personal exemption for taxpayers and some dependents with certain physical conditions. Families with severely retarded dependents were eligible for a \$2,200 personal exemption. Before the repeal of these exemptions in 1989, they covered 13 different diseases and physical conditions. Anyone who had one of the named conditions received a tax benefit, regardless whether the impact of the condition was disabling. Many other debilitating diseases and disabling conditions were not, however, named in the law, so persons subject to these conditions did not receive a similar tax benefit.

Because these personal exemptions were deducted from gross income, they had a regressive tax impact. That is, persons with higher incomes received a greater benefit from the exemptions than persons with lower incomes. For example, a low-income person who was in the 3% tax bracket would receive a \$33.00 reduction in tax by claiming a \$1,100 personal exemption; a higher-income person who was in the top tax bracket (7%) would receive a \$77.00 reduction in tax by claiming the same personal exemption.

These personal exemptions were repealed by the Tax Fairness Act of 1989. By adopting the federal personal exemption and standard deduction amounts, the law should reduce or eliminate income taxes for the State's poorest citizens and reduce taxes for most lower-to-middle income families. Higher income taxpayers should experience a small percentage increase in tax. In enacting the new law, it was felt that most of the persons who had previously benefitted from the special tax breaks based on certain diseases and disabilities would actually pay less tax under the new law, and thus would not be hurt by the elimination of these exemptions.

The Tax Fairness Act of 1989 also adopts the federal rules that allow additional standard deduction amounts for taxpayers who are 65 or older and/or blind. The new law adopts the federal credit for the disabled, which shelters a low-income taxpayer's disability income from tax. The law also expands the amount of the dependent care credit that applies to dependents who are mentally or physically unable to care for themselves.

In reviewing these tax benefits, the Revenue Laws Study Committee decided there was a need to provide additional tax relief for taxpayers who have dependents who are disabled. The Committee adopted Section 6 of Legislative Proposal 2, which would allow a new tax credit, avoiding the regressive effect of a deduction which benefits

persons with higher income more than persons with lower income. The credit would apply equally to all who are disabled, rather than singling out certain physical conditions for favorable treatment while providing no relief for others. The maximum credit allowed would be \$100.00 for a surviving spouse or couple filing a joint return; the amount of the credit would decrease as the taxpayer's income increased over \$20,000 and would phase out completely for taxpayers with income above \$40,000. For a head of household, the maximum credit would be \$80.00, phased out for taxpayers with income between \$16,000 and \$32,000. Thus, the proposal is crafted to provide the greatest benefit to the neediest families with disabled dependents.

Overview of Bill:

The 1989 General Assembly overhauled the state personal income tax for the first time since its inception in 1921 by tying the state tax calculation to federal taxable income and applying 6% and 7% rate brackets. The new act became effective for the 1989 tax year.

Due to the late ratification date of the new act and the 1989 effective date, concern has been expressed by many taxpayers about the short lead time in adjusting their financial decisions to the new law. In many cases, the new law created unanticipated tax consequences for act taken in 1989 before the act was ratified. In addition, there are some technical language changes needed to clarify the new tax code.

S CORPORATION CHANGESBackground Information

Since 1958, federal tax law has allowed certain closely-held corporations to be taxed in a form similar to a partnership. Under current rules, corporations with less than 35 owners are exempt from the corporate income tax with items of income and loss being passed through each year to the shareholders.

During the 1988 session, the General Assembly allowed S Corporation filing for state purposes, effective for tax years beginning on or after July 1, 1990 (January 1, 1991 for calendar years corporations). The enactment of SB 51 accelerated the effective date of S Corporation filing to the 1989 tax year.

Explanation of Changes

- (1) Regular corporations are allowed to carry forward net economic losses for up to five years. The language in the 1988 S Corporation act (carried forward to SB 51) did not allow losses at the corporate level prior to the conversion to S Corporation status to be used to offset income under the new system. However, the 2 1/2-3 year planning period under the 1988 allowed affected taxpayers time to plan for and adjust to the change. The acceleration of S Corp filing under SB 51 eliminated this tax planning period.

Proposal 2 amends SB 51 by restoring the delayed effective date of S Corp tax filing with respect to the provision that disallows loss carryforwards. Thus, pre-1989 net economic losses can be carried forward and used to offset the corporation's income in 1989 and 1990 and this offset would be passed through to individual shareholders. The shareholders could capture this offset for the 1989 tax year by filing an amended return.

- (2) A case of double taxation can occur under the new law in the situation of certain distributions (such as dividends) made by an S Corp during the 1989 calendar year. For an S Corp that does not use the calendar year as its fiscal year, earnings for the corporation's 1988 fiscal year that were distributed during its 1989 fiscal year were taxed at the corporate level for 1988 and then as dividends to shareholders for the 1989 calendar year. Under prior tax law double taxation could be avoided in many cases through the \$15,000 deduction for N.C. dividends (equivalent to a \$1,050 tax benefit). SB 51 contains a smaller offset for many taxpayers (\$300 tax credit).

Proposal 2 allows taxpayers an unlimited tax credit for distributions from pre-1989 earnings made before October 1, 1989, or made by a fiscal year corporation during the 1988 calendar year. The taxpayer could capture this relief for the 1989 tax year by filing an amended return.

Effective Date:

Tax years beginning on or after January 1, 1989.

Fiscal Effect:

There is little good data on the amount of loss carryforwards that exist in North Carolina or the impact of the dividend credit. Using IRS data on federal S Corporation losses and the number of phone calls received by the Department of Revenue on this issue suggests the enactment of these portions of the bill could reduce General Fund tax revenue by as much as \$2 million for the 1989 tax year refund. The impact on 1990-91 from the loss carryforward provision may be as much as \$1 million. There would be no impact in future years.

MORTGAGE CREDIT CERTIFICATE

Background Information:

In 1984 the U.S. Congress included in its tax adjustment package a proposal to allow states to create a mortgage certificate credit program (MCC). The N.C. Housing Finance Agency (NCHFA) began offering the program in 1987 through 111 lending institutions.

Under the MCC qualified first-time home buyers may take 15% or 25% of their mortgage interest costs as federal income tax credit instead of a deduction. The credit allows the homeowner a significant increase in federal tax relief for home ownership. For example, a married couple with \$25,000 or gross income and \$4,000 of mortgage interest would receive \$1,450 of tax relief (assuming a 25% credit) under the special credit option versus \$600 under the straight deduction.

The North Carolina income tax base uses federal taxable income as a starting point. Since the federal itemized deduction for mortgage costs is reduced by the credit base, North Carolinians using the federal credit are not able to offset the full amount of their interest costs.

Explanation of Change:

Allows North Carolina taxpayers receiving the federal mortgage certificate credit to deduct from their state taxable income the amount of the federal credit base, thereby ensuring that 100% of their mortgage costs are deductible for state purposes.

Effective Date:

Tax years beginning on or after January 1, 1989.

Fiscal Effect:

Would reduce General Fund tax revenue by \$345,000 for the 1990-91 fiscal year. In addition, there could be \$260,000-345,000 of one-time refunds in 1990-91 for the 1989 tax year.

DISABILITY TAX CREDIT

Background Information

Prior to SB 51 taxpayers and/or dependents were allowed an additional personal income tax exemption of \$1,100 (\$2,200 in one case) for certain physical conditions (regardless of whether the condition led to the person being disabled). During each legislative session a couple of new conditions were made eligible for the exemption. In 1988, a total of 13 special exemptions were covered. No other state allowed such treatment.

SB 51 allows a state tax credit of one-third the federal credit for taxpayers who receive disability income. The credit phases down as the taxpayer's income rises. The new law also allows a higher standard deduction for taxpayers who are blind. there is no special relief for disabled dependents.

Explanation of Change

Allows taxpayers to take a tax credit for disabled dependents at the following base amount:

	Maximum Credit	Adjusted Gross Income	
		At Beginning of Phase-Down	At End of Phase-Down
Head-Of-Household	\$80	\$16,000	\$32,000
Married, filing jointly	100	20,000	40,000
Married, filing separately	50	10,000	20,000

Effective Date

1990 tax year.

Fiscal Effect

Under prior law the additional exemptions provided \$33 of relief for the lowest income taxpayers and \$77 for taxpayers in the highest bracket. The total cost of these special exemptions was approximately \$4 million.

The \$4 million cost of the prior exemptions would need to be adjusted for the following items to determine the cost of the proposed credit:

- (1) The broad-based nature of the credit means that more disabilities would be covered
- (2) The credit applies to dependents only, while the exemption applied to dependents *and* taxpayers in some cases
- (3) Many low-income taxpayers were taken off the tax rolls under SB 51
- (4) The relief per taxpayer under the credit is generally greater than under the prior exemption but the income phase-out will limit the credit to low- and middle-income taxpayers.

SECTION 179 PROPERTY

Background Explanation:

Under Section 179 of the Internal Revenue Code a taxpayer is allowed to expense (fully deduct in year of purchase) up to \$10,000 of personal property used in a trade or business. The basis (purchase price and related costs) of personal property above this amount must be depreciated over a 7 year period. The depreciation is then "recaptured" when the property is disposed of.

Because North Carolina tax law has never allowed the Sec. 179 expensing, the basis of such property had been different for federal and state purposes. The transitional language in SB 51 would have adjusted the basis in the year in which the property was disposed of. The effect is to eliminate the annual depreciation of the property and to make a one-time adjustment when the property is sold.

Explanation of Provision:

Amends the 1989 transition language to allow a taxpayer who took the Sec. 179 election for a tax year beginning before January 1, 1989 to continue depreciating the property until the total depreciation equals the amount the taxpayer originally expensed for federal tax purposes.

Effective Date:

Tax years beginning on or after January 1, 1989.

Fiscal Effect:

The one-time impact on General Fund tax revenue for 1989 tax year refunds will be \$2.0-2.5 million, depending on how many eligible taxpayers actually file for refunds. The on-going cash-flow impact on each year's tax collections is a reduction of \$2.6 million, beginning with the 1990-91 fiscal year.

Over the long-run there is no net impact as the continuance of the depreciation deduction will mean a larger depreciation recapture when the property is disposed of.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

PROPOSAL 3 (89-LCX-316)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Adopt 1990 Code and Index.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED
3 TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS AND TO
4 ADOPT THE FEDERAL STANDARD DEDUCTION AND PERSONAL EXEMPTION
5 AMOUNTS FOR 1990.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-134.1(1) reads as rewritten:
8 "(1) Code. The Internal Revenue Code as enacted as of
9 January 1, ~~1989~~, 1990, including any provisions
10 enacted as of that date which become effective
11 either before or after that ~~date, but not including~~
12 ~~sections 63(c)(4) and 151(d)(3).~~ date."
13 Sec. 2. G.S. 105-134.6(c) reads as rewritten:
14 "(c) Additions. The following additions to taxable income
15 shall be made in calculating North Carolina taxable income, to
16 the extent each item is not included in gross income:
17 (1) Interest upon the obligations of states, other than
18 this State, and their political subdivisions.
19 (2) Any amount allowed as a deduction from gross income
20 under the Code that is taxed under the Code by a
21 separate tax other than the tax imposed in section
22 1 of the Code. The Secretary shall report to the
23 1991 General Assembly all provisions under the Code
24 for taxing certain amounts separately and shall

1 recommend whether those amounts should be taxed
2 separately under this Division or should be added
3 to taxable income in calculating North Carolina
4 taxable income.

5 (3) Any amount deducted from gross income under section
6 164 of the Code as State, local, or foreign income
7 tax to the extent that the taxpayer's total
8 itemized deductions deducted under the Code for the
9 taxable year exceed the standard deduction
10 allowable to the taxpayer under the Code reduced by
11 the amount by which the taxpayer's allowable
12 standard deduction has been increased under section
13 63(c)(4) of the Code. Code for taxable years
14 beginning on or after January 1, 1991.

15 (4) The amount by which the taxpayer's standard
16 deduction has been increased under section 63(c)(4)
17 of the Code for taxable years beginning on or after
18 January 1, 1991, and the amount by which the
19 taxpayer's personal exemptions have been increased
20 under section 151(d)(3) of the Code. Code for
21 taxable years beginning on or after January 1,
22 1991."

23 Sec. 3. G.S. 105-134.2 reads as rewritten:

24 "**§ 105-134.2. Individual income tax imposed.**

25 (a) A tax is imposed upon the North Carolina taxable income of
26 every individual. The tax shall be levied, collected, and paid
27 annually and shall be computed at the following percentages of
28 the taxpayer's North Carolina taxable income.

29 (1) For married individuals who file a joint return
30 under G.S. 105-152.1 and for surviving spouses, as
31 defined in section 2(a) of the Code:

32 On the North Carolina taxable income up to
33 ~~twenty-one thousand two hundred fifty dollars~~
34 ~~(\$21,250),~~ fourteen thousand five hundred dollars
35 (\$14,500), six percent (6%); and

36 On the excess over ~~twenty-one thousand two~~
37 ~~hundred fifty dollars (\$21,250),~~ fourteen thousand
38 five hundred dollars (\$14,500), seven percent (7%).

39 (2) For heads of households, as defined in section 2(b)
40 of the Code:

41 On the North Carolina taxable income up to
42 ~~seventeen thousand dollars (\$17,000),~~ eleven
43 thousand six hundred dollars (\$11,600), six percent
44 (6%); and

1 On the excess over ~~seventeen thousand dollars~~
2 ~~(\$17,000),~~ eleven thousand six hundred dollars
3 ~~(\$11,600),~~ seven percent (7%).

4 (3) For unmarried individuals other than surviving
5 spouses and heads of households:

6 On the North Carolina taxable income up to
7 ~~twelve thousand seven hundred fifty dollars~~
8 ~~(\$12,750),~~ eight thousand seven hundred dollars
9 ~~(\$8,700),~~ six percent (6%); and

10 On the excess over ~~twelve thousand seven~~
11 ~~hundred fifty dollars (\$12,750),~~ eight thousand
12 seven hundred dollars (\$8,700), seven percent (7%).

13 (4) For married individuals who do not file a joint
14 return under G.S. 105-152.1:

15 On the North Carolina taxable income up to ~~ten~~
16 ~~thousand six hundred twenty-five dollars (\$10,625),~~
17 seven thousand two hundred fifty dollars (\$7,250),
18 six percent (6%); and

19 On the excess over ~~ten thousand six hundred~~
20 ~~twenty-five dollars (\$10,625),~~ seven thousand two
21 hundred fifty dollars (\$7,250), seven percent
22 (7%)."

23 Sec. 4. G.S. 105-2.1 reads as rewritten:

24 "**§ 105-2.1. Internal Revenue Code definition.**

25 As used in this Article, the term 'Code' means the Internal
26 Revenue Code as enacted as of ~~January 1, 1989,~~ January 1, 1990,
27 and includes any provisions enacted as of that date which become
28 effective either before or after that date."

29 Sec. 5. G.S. 105-114 reads as rewritten:

30 "**§ 105-114. Nature of taxes; definitions.**

31 (a) Nature of Taxes. The taxes levied in this Article upon
32 persons and partnerships are for the privilege of engaging in
33 business or doing the act named. The taxes levied in this
34 Article upon corporations are privilege or excise taxes levied
35 upon:

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

43 (2) Corporations not organized under the laws of this
44 State for doing business in this State and for the

1 benefit and protection which such corporations
2 receive from the government and laws of this State
3 in doing business in this State.

4 If the corporation is organized under the laws of this State,
5 the payment of the taxes levied by this Article shall be a
6 condition precedent to the right to continue in such form of
7 organization; and if the corporation is not organized under the
8 laws of this State, payment of these taxes shall be a condition
9 precedent to the right to continue to engage in doing business in
10 this State. The taxes levied in this Article or schedule shall
11 be for the fiscal year of the State in which the taxes become
12 due; except that the taxes levied in G.S. 105-122 and G.S.
13 105-123 shall be for the income year of the corporation in which
14 the taxes become due.

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

17 (1) As used in this Article, the The term 'Code' means
18 the Internal Revenue Code as enacted as of January
19 1, 1989, January 1, 1990, and includes any
20 provisions enacted as of that date which become
21 effective either before or after that date.

22 (2) The term 'corporation' as used in this Article
23 shall, unless the context clearly requires another
24 interpretation, mean and include not only
25 corporations but also associations or joint-stock
26 companies and every other form of organization for
27 pecuniary gain, having capital stock represented by
28 shares, whether with or without par value, and
29 having privileges not possessed by individuals or
30 partnerships; and whether organized under, or
31 without, statutory authority. The term
32 'corporation' as used in this Article shall also
33 mean and include any electric membership
34 corporation organized under Chapter 117, and any
35 electric membership corporation, whether or not
36 organized under the laws of this State, doing
37 business within the State.

38 (3) The ~~When the~~ term 'doing business' ~~is used in this~~
39 ~~Article,~~ it shall mean and include each and every
40 act, power or privilege exercised or enjoyed in
41 this State, as an incident to, or by virtue of the
42 powers and privileges acquired by the nature of
43 such organizations whether the form of existence be

1 corporate, associate, joint-stock company or
2 common-law trust.

3 ~~If the corporation is organized under the laws of this State,~~
4 ~~the payment of the taxes levied by this Article shall be a~~
5 ~~condition precedent to the right to continue in such form of~~
6 ~~organization; and if the corporation is not organized under the~~
7 ~~laws of this State, payment of said taxes shall be a condition~~
8 ~~precedent to the right to continue to engage in doing business in~~
9 ~~this State. The taxes levied in this Article or schedule shall~~
10 ~~be for the fiscal year of the State in which said taxes become~~
11 ~~due; except, that the taxes levied in G.S. 105-122 and G.S.~~
12 ~~105-123 shall be for the income year of the corporation in which~~
13 ~~such taxes become due. For purposes of this Article, the words~~

14 (4) The term 'income year' shall mean an income year as
15 defined in G.S. 105-130.2(5)."

16 Sec. 6. G.S. 105-130.2(1) reads as rewritten:

17 "(1) 'Code' means the Internal Revenue Code as enacted
18 as of January 1, 1989, January 1, 1990, and
19 includes any provisions enacted as of that date
20 which become effective either before or after that
21 date."

22 Sec. 7. G.S. 105-131(b)(1) reads as rewritten:

23 "(1) 'Code' means the Internal Revenue Code ~~of 1986,~~ as
24 enacted as of January 1, 1989, January 1, 1990, and
25 includes any provisions enacted as of that date
26 which become effective either before or after that
27 date."

28 Sec. 8. G.S. 105-163.1(11) reads as rewritten:

29 "(11) 'Code' means the Internal Revenue Code as enacted
30 as of January 1, 1989, January 1, 1990, and
31 includes any provisions enacted as of that date
32 which become effective either before or after that
33 date."

34 Sec. 9. G.S. 105-212(f) reads as rewritten:

35 "(f) As used in this section, the term 'Code' means the
36 Internal Revenue Code as enacted as of January 1, 1989, January
37 1, 1990, and includes any provisions enacted as of that date
38 which become effective either before or after that date."

39 Sec. 10. This act is effective for taxable years
40 beginning on or after January 1, 1990.

Explanation of Proposal 3

Legislative Proposal 3 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1989, to January 1, 1990. Updating the reference makes recent amendments to the Internal Revenue Code applicable to the State to the extent that State tax law previously tracked federal law. This update has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. The inheritance tax, franchise tax, and intangibles tax also determine some exemptions based on the provisions of the Code.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code as it existed on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law recently and the likelihood of continued changes, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, § 2(1) of the Constitution provides in pertinent part that the "power of taxation... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would... be invalidated as an unconstitutional delegation of legislative power."

Each year, in deciding whether the Internal Revenue Code reference should be updated, the Revenue Laws Study Committee considers the changes that have been made to the Code in the past year. The Revenue Laws Study Committee learned this year that the 1989 Code changes will have only a negligible impact on the State corporate income tax. There were a number of Code changes, however, that will affect the State individual income tax; these changes are outlined in Appendix E. The most significant of these changes, allowance of a deduction for self-employment taxes, will reduce individual income tax revenues.

Legislative Proposal 3 also adopts a provision of the Code that increased the personal exemption and standard deduction amounts for the 1990 tax year. The Tax Fairness Act of 1989 established federal taxable income, as determined under the Code, as the starting point for North Carolina taxable income. The federal personal exemption and standard deduction amounts are subtracted as part of the calculation of federal taxable income. Under the Code, these federal amounts are increased automatically each year based on increases in the cost of living due to inflation. Automatically indexing the exemption and deduction amounts in this way assures that taxpayers pay more taxes if they have real increases in income but not if their income increases only at the same rate as inflation. The Tax Fairness Act of 1989 did not adopt the federal indexing based on inflation; State income tax law uses the federal exemption and deduction amounts set by the Code without regard to automatic increases based on inflation. As a result, a North Carolina taxpayer must add to North Carolina taxable income the difference between the federal base amounts and the indexed amounts. In addition, a taxpayer whose income increases by less than the amount by which the cost of living increased will pay higher taxes.

The Revenue Laws Study Committee investigated whether North Carolina should adopt inflation indexing of the personal exemption and standard deduction amounts. Adopting indexing causes State income tax revenues to grow more slowly each year than they otherwise would. On the other hand, adopting indexing makes it easier for North Carolina citizens to calculate their taxes and protects them from some of the negative effects of inflation. After balancing these considerations, the Committee decided to recommend adoption of the federally indexed amounts for the current tax year, 1990. Whether to adopt inflation indexing for later years can be decided each year based on considerations relevant to that year. The Committee also decided that the update of the personal exemption and standard deduction amounts should be combined with the update of the Code reference, and that the income tax rate

thresholds should be adjusted to make the entire package revenue-neutral. The change in tax thresholds, provided in Section 3 of Legislative Proposal 3, will apply the 7% rate to more of each taxpayer's taxable income, thereby generating revenue to offset the decrease in taxes resulting from adoption of larger personal exemptions and standard deductions as well as the new deduction for self-employment taxes.

Background Information:

Under the Tax Fairness Act of 1989 (SB 51), the state personal income tax was completely overhauled. The new state tax uses federal taxable income as the starting point and two tax rates (6% and 7%). The new law conformed to the Internal Revenue Code as of January 1, 1989.

By using federal taxable income as the starting point in the state calculation, the federal personal exemption level of \$2,000 per person was adopted. The conformity language was written so that the 1988 standard deduction levels (\$5,000 for married couple filing jointly) were used.

Under federal law, the personal exemption and standard deduction amounts are indexed annually to the rise in the Consumer Price Index.

Explanation of Proposal:

- (1) Updates state conformity to the Internal Revenue Code from January 1, 1989 to January 1, 1990. The effect of updating conformity is to pick up the handful of federal tax changes from last year, to increase personal exemptions from \$2,000 to \$2,050, and to increase the standard deductions by 8-9% (from \$5,000 for a married couple filing jointly to \$5,450).
- (2) To offset the impact of the higher personal exemptions and standard deduction amounts, the income threshold at which the 7% rate schedule applies is lowered as follows:

	<u>Tax Rate</u>	<u>Current Brackets</u>	<u>Proposed Brackets</u>
Married filing jointly, surviving spouse	6%	\$1-\$21,250	\$1-\$14,500
	7%	\$21,251 & over	\$14,501 & over
Head-of-household	6%	\$1-\$17,000	\$1-\$11,600
	7%	\$17,001 & over	\$11,601 & over
Single person	6%	\$1-\$12,750	\$1-\$8,700
	7%	\$12,750 & over	\$8,701 & over
Married filing separately	6%	\$1-\$10,625	\$1-\$7,250
	7%	\$10,626 & over	\$7,251 & over

Effective Date:
 Upon ratification.

Fiscal Effect:

The tax rate schedule was adjusted to threshold levels that would lead to no annual change in General Fund tax revenue, based on the best data available.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

PROPOSAL 4 (90-RB-102)
THIS IS A DRAFT AND NOT READY FOR INTRODUCTION

Short Title: Property Tax Appeals/Technical Changes. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE TIME ALLOWED FOR FILING CERTAIN PROPERTY TAX
3 APPEALS AND TO MAKE TECHNICAL CORRECTIONS TO THE PROPERTY TAX
4 STATUTES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-290(e) reads as rewritten:
7 "(e) Time Limits for Appeals. ~~A notice of appeal from an~~
8 ~~order of a board of equalization and review shall be filed with~~
9 ~~the Property Tax Commission within 30 days after the board of~~
10 ~~equalization and review has mailed a notice of its decision to~~
11 ~~the property owner. A notice of appeal from an order of a board~~
12 ~~of commissioners concerning the listing, appraisal, or assessment~~
13 ~~of property shall be filed with the Property Tax Commission~~
14 ~~within 30 days after the board of county commissioners enters the~~
15 ~~order. A notice of appeal from an order of a board of county~~
16 commissioners, other than an order adopting a uniform schedule of
17 values, or from a board of equalization and review shall be filed
18 with the Property Tax Commission within 30 days after the date
19 the board mailed a notice of its decision to the property owner.
20 A notice of appeal from an order adopting a schedule of values
21 shall be filed within the time set in subsection (c)."
22 Sec. 2. G.S. 105-290(g) reads as rewritten:

1 "(g) What Constitutes Filing. ~~A notice of appeal is~~
2 ~~considered to be filed with the Property Tax Commission when it~~
3 ~~is received in the office of the Commission. A notice of appeal~~
4 ~~submitted to the Property Tax Commission by a means other than~~
5 ~~United States mail is considered to be filed on the date it is~~
6 ~~received in the office of the Commission. A notice of appeal~~
7 ~~submitted to the Property Tax Commission by United States mail is~~
8 ~~considered to be filed on the date shown on the postmark stamped~~
9 ~~by the United States Postal Service. If an appeal submitted by~~
10 ~~United States mail is not postmarked or the postmark does not~~
11 ~~show the date of mailing, the appeal is considered to be filed on~~
12 ~~the date it is received in the office of the Commission. A~~
13 ~~property owner who files an appeal with the Commission has the~~
14 ~~burden of proving that the appeal is timely."~~

15 Sec. 3. G.S. 153A-149(c) reads as rewritten:

16 "(c) Each county may levy property taxes for one or more of the
17 purposes listed in this subsection up to ~~an effective~~ a combined
18 rate of one dollar and fifty cents (\$1.50) on the one hundred
19 dollars (\$100.00) appraised value of property subject to ~~taxation~~
20 ~~before the application of any assessment ratio. taxation. To find~~
21 ~~the actual rate limit for a particular county, divide the~~
22 ~~effective rate limit of one dollar and fifty cents (\$1.50) by the~~
23 ~~county assessment ratio. Authorized purposes subject to the rate~~
24 limitation are:

- 25 (1) To provide for the general administration of the
26 county through the board of county commissioners,
27 the office of the county manager, the office of the
28 county budget officer, the office of the county
29 finance officer, the office of the county assessor,
30 the office of the county tax collector, the county
31 purchasing agent, and the county attorney, and for
32 all other general administrative costs not
33 allocated to a particular board, commission,
34 office, agency, or activity of the county.
- 35 (2) Agricultural Extension. -- To provide for the
36 county's share of the cost of maintaining and
37 administering programs and services offered to
38 agriculture by or through the Agricultural
39 Extension Service or other agencies.
- 40 (3) Air Pollution. -- To maintain and administer air
41 pollution control programs.
- 42 (4) Airports. -- To establish and maintain airports and
43 related aeronautical facilities.

- 1 (5) Ambulance Service. -- To provide ambulance
2 services, rescue squads, and other emergency
3 medical services.
- 4 (6) Animal Protection and Control. -- To provide animal
5 protection and control programs.
- 6 (6a) Arts Programs and Museums. -- To provide for arts
7 programs and museums as authorized in G.S.
8 160A-488.
- 9 (6b) Auditoriums, coliseums, and convention and civic
10 centers. -- To provide public auditoriums,
11 coliseums, and convention and civic centers.
- 12 (7) Beach Erosion and Natural Disasters. -- To provide
13 for shoreline protection, beach erosion control,
14 and flood and hurricane protection.
- 15 (8) Cemeteries. -- To provide for cemeteries.
- 16 (9) Civil Preparedness. -- To provide for civil
17 preparedness programs.
- 18 (10) Debts and Judgments. -- To pay and discharge any
19 valid debt of the county or any judgment lodged
20 against it, other than debts and judgments
21 evidenced by or based on bonds and notes.
- 22 (10a) Defense of Employees and Officers. -- To provide
23 for the defense of, and payment of civil judgments
24 against, employees and officers or former employees
25 and officers, as authorized by this Chapter.
- 26 (10b) Economic Development. -- To provide for economic
27 development as authorized by G.S. 158-12.
- 28 (11) Fire Protection. -- To provide fire protection
29 services and fire prevention programs.
- 30 (12) Forest Protection. -- To provide forest management
31 and protection programs.
- 32 (13) Health. -- To provide for the county's share of
33 maintaining and administering services offered by
34 or through the county or district health
35 department.
- 36 (14) Historic Preservation. -- To undertake historic
37 preservation programs and projects.
- 38 (15) Hospitals. -- To establish, support and maintain
39 public hospitals and clinics, and other related
40 health programs and ~~facility,~~ facilities, or to aid
41 any private, nonprofit hospital, clinic, related
42 ~~facilities,~~ facility, or other health program or
43 facility.

- 1 (15a) Housing Rehabilitation. -- To provide for personnel
2 costs related to planning and administration of
3 housing rehabilitation programs authorized by G.S.
4 153A-376. This subdivision only applies to
5 counties with a population of 400,000 or more,
6 according to the most recent decennial federal
7 census.
- 8 (16) Human Relations. -- To undertake human relations
9 programs.
- 10 (16a) Industrial Development. -- To provide for
11 industrial development as authorized by G.S.
12 158-7.1.
- 13 (17) Joint Undertakings. -- To cooperate with any other
14 county, city, or political subdivision in providing
15 any of the functions, services, or activities
16 listed in this subsection.
- 17 (18) Law Enforcement. -- To provide for the operation of
18 the office of the sheriff of the county and for any
19 other county law-enforcement agency not under the
20 sheriff's jurisdiction.
- 21 (19) Libraries. -- To establish and maintain public
22 libraries.
- 23 (20) Mapping. -- To provide for mapping the lands of the
24 county.
- 25 (21) Medical Examiner. -- To provide for the county
26 medical examiner or coroner.
- 27 (22) Mental Health. -- To provide for the county's share
28 of the cost of maintaining and administering
29 services offered by or through the area mental
30 health, developmental disabilities, and substance
31 abuse authority.
- 32 (23) Open Space. -- To acquire open space land and
33 easements in accordance with Article 19, Part 4,
34 Chapter 160A of the General Statutes.
- 35 (24) Parking. -- To provide off-street lots and garages
36 for the parking and storage of motor vehicles.
- 37 (25) Parks and Recreation. -- To establish, support and
38 maintain public parks and programs of supervised
39 recreation.
- 40 (26) Planning. -- To provide for a program of planning
41 and regulation of development in accordance with
42 Article 18 of this Chapter and Article 19, Parts 3A
43 and 6, of Chapter 160A of the General Statutes.

- 1 (27) Ports and Harbors. -- To participate in programs
2 with the North Carolina Ports Authority and provide
3 for harbor masters.
- 4 (27a) Railway Corridor Preservation. -- To acquire
5 property for railroad corridor preservation as
6 authorized by G.S. 160A-498.
- 7 (28) Register of Deeds. -- To provide for the operation
8 of the office of the register of deeds of the
9 county.
- 10 (29) Sewage. -- To provide sewage collection and
11 treatment services as defined in G.S. 153A-274(2).
- 12 (30) Social Services. -- To provide for the public
13 welfare through the maintenance and administration
14 of public assistance programs not required by
15 Chapters 108A and 111 of the General Statutes, and
16 by establishing and maintaining a county home.
- 17 (31) Solid Waste. -- To provide solid waste collection
18 and disposal services, and to acquire and operate
19 landfills.
- 20 (31a) Stormwater. -- To provide structural and natural
21 stormwater and drainage systems of all types.
- 22 (32) Surveyor. -- To provide for a county surveyor.
- 23 (33) Veterans' Service Officer. -- To provide for the
24 county's share of the cost of services offered by
25 or through the county veterans' service officer.
- 26 (34) Water. -- To provide water supply and distribution
27 systems.
- 28 (35) Watershed Improvement. -- To undertake watershed
29 improvement projects.
- 30 (36) Water Resources. -- To participate in federal water
31 resources development projects.
- 32 (37) Armories. -- To supplement available State or
33 federal funds to be used for the construction
34 (including the acquisition of land), enlargement or
35 repair of armory facilities for the North Carolina
36 national guard.
- 37 (38) Railway Corridor Preservation. -- To acquire
38 property for railroad corridor preservation as
39 authorized by G.S. 160A-498."

40 Sec. 4. G.S. 153A-149(d) reads as rewritten:

41 "(d) With an approving vote of the people, any county may levy
42 property taxes for any purpose for which the county is authorized
43 by law to appropriate money. Any property tax levy approved by a

1 vote of the people shall not be counted for purposes of the rate
2 limitation imposed in subsection (c).

3 The county commissioners may call a referendum on approval of a
4 property tax levy. The referendum may be held at the same time as
5 any other referendum or election, but may not be otherwise held
6 within the period of time beginning 30 days before and ending 10
7 days after any other referendum or election to be held in the
8 county and already validly called or scheduled by law at the time
9 the tax referendum is called. The referendum shall be conducted
10 by the county board of elections. The clerk to the board of
11 commissioners shall publish a notice of the referendum at least
12 twice. The first publication shall be not less than 14 days and
13 the second publication not less than seven days before the last
14 day on which voters may register for the referendum. The notice
15 shall state the date of the referendum, the purpose for which it
16 is being held, and a statement as to the last day for
17 registration for the referendum under the election laws then in
18 effect.

19 The proposition submitted to the voters shall be substantially
20 in one of the following forms:

21 (1) Shall County be authorized to levy annually a
22 property tax at ~~an effective~~ a rate not in excess of
23 cents on the one hundred dollars (\$100.00) value of property
24 subject to taxation for the purpose of?

25 (2) Shall County be authorized to levy annually a
26 property tax at a rate not in excess of that which will produce
27 \$..... for the purpose of?

28 (3) Shall County be authorized to levy
29 annually a property tax without restriction as to rate or amount
30 for the purpose of?

31 If a majority of those participating in the referendum approve
32 the proposition, the board of commissioners may proceed to levy
33 annually a property tax within the limitations (if any) described
34 in the proposition.

35 The board of elections shall canvass the referendum and certify
36 the results to the board of commissioners. The board of
37 commissioners shall then certify and declare the result of the
38 referendum and shall publish a statement of the result once, with
39 the following statement appended: "Any action or proceeding
40 challenging the regularity or validity of this tax referendum
41 must be begun within 30 days after (date of publication)." The
42 statement of results shall be filed in the clerk's office and
43 inserted in the minutes of the board.

1 Any action or proceeding in any court challenging the
2 regularity or validity of a tax referendum must be begun within
3 30 days after the publication of the results of the referendum.
4 After the expiration of this period of limitation, no right of
5 action or defense based upon the invalidity of or any
6 irregularity in the referendum shall be asserted, nor shall the
7 validity of the referendum be open to question in any court upon
8 any ground whatever, except in an action or proceeding begun
9 within the period of limitation prescribed herein.

10 Except for supplemental school taxes and except for tax
11 referendums on functions not included in subsection (c) of this
12 section, any referendum held before July 1, 1973, on the levy of
13 property taxes is not valid for the purposes of this subsection.
14 Counties in which such referendums have been held may support
15 programs formerly supported by voted property taxes within the
16 general rate limitation set out in subsection (c) at any
17 appropriate level and are not subject to the former voted rate
18 limitation."

19 Sec. 5. G.S. 153A-149(e) reads as rewritten:

20 "(e) With an approving vote of the people, any county may
21 increase the property tax rate limitation imposed in subsection
22 (c) and may call a referendum for that purpose. The referendum
23 may be held at the same time as any other referendum or election,
24 but may not be otherwise held within the period of time beginning
25 30 days before and ending 30 days after any other referendum or
26 election. The referendum shall be conducted by the county board
27 of elections.

28 The proposition submitted to the voters shall be substantially
29 in the following form: "Shall the ~~effective~~ property tax rate
30 limitation applicable to County be increased from
31 on the one hundred dollars (\$100.00) value of property
32 subject to taxation to on the one hundred dollars
33 (\$100.00) value of property subject to taxation?"

34 If a majority of those participating in the referendum approve
35 the proposition, the rate limitation imposed in subsection (c)
36 shall be increased for the county."

37 Sec. 6. G.S. 160A-209(e) reads as rewritten:

38 "(e) With an approving vote of the people, any city may levy
39 property taxes for any purpose for which the city is authorized
40 by its charter or general law to appropriate money. Any property
41 tax levy approved by a vote of the people shall not be counted
42 for purposes of the rate limitation imposed in subsection (d).

43 The city council may call a referendum on approval of a
44 property tax levy. The referendum may be held at the same time as

1 any other city referendum or city election, but may not be
2 otherwise held (i) on the day of any federal, State, district, or
3 county election already validly called or scheduled by law at the
4 time the tax referendum is called, or (ii) within the period of
5 time beginning 30 days before and ending 10 days after the day of
6 any other city referendum or city election already validly called
7 or scheduled by law at the time the tax referendum is called. The
8 referendum shall be conducted by the same board of elections that
9 conducts regular city elections. A notice of referendum shall be
10 published in accordance with G.S. 163-287. The notice shall state
11 the date of the referendum, the purpose for which it is being
12 held, and a statement as to the last day for registration for the
13 referendum under the election laws then in effect.

14 The proposition submitted to the voters shall be substantially
15 in one of the following forms:

16 (1) Shall the City/Town of be authorized to
17 levy annually a property tax at ~~an effective~~ a rate not in excess
18 of cents on the one hundred dollars (\$100.00) value of
19 property subject to taxation for the purpose of
20?

21 (2) Shall the City/Town of be authorized to
22 levy annually a property tax at a rate not in excess of that
23 which will produce \$ for the purpose of
24?

25 (3) Shall the City/Town of be authorized to
26 levy annually a property tax without restriction as to rate or
27 amount for the purpose of?

28 If a majority of those participating in the referendum approve
29 the proposition, the city council may proceed to levy annually a
30 property tax within the limitations (if any) described in the
31 proposition. ~~Unless otherwise provided in the proposition~~
32 ~~submitted to the voters, a vote on a property tax levy not to~~
33 ~~exceed a specified rate per one hundred dollars (\$100.00) value~~
34 ~~of property subject to taxation is a vote on an effective rate~~
35 ~~per one hundred dollars (\$100.00) of appraised value of property~~
36 ~~before the application of any assessment ratio.~~

37 The board of elections shall canvass the referendum and certify
38 the results to the city council. The council shall then certify
39 and declare the result of the referendum and shall publish a
40 statement of the result once, with the following statement
41 appended: 'Any action or proceeding challenging the regularity or
42 validity of this tax referendum must be begun within 30 days
43 after (date of publication).' The statement of results shall be

1 filed in the clerk's office and inserted in the minutes of the
2 council.

3 Any action or proceeding in any court challenging the
4 regularity or validity of a tax referendum must be begun within
5 30 days after the publication of the results of the referendum.
6 After the expiration of this period of limitation, no right of
7 action or defense based upon the invalidity of or any
8 irregularity in the referendum shall be asserted, nor shall the
9 validity of the referendum be open to question in any court upon
10 any ground whatever, except in an action or proceeding begun
11 within the period of limitation prescribed herein.

12 Except for tax referendums on functions not included in
13 subsection (c) of this section, any referendum held before July
14 1, 1973, on the levy of property taxes is not valid for the
15 purposes of this subsection. Cities in which such referendums
16 have been held may support programs formerly supported by voted
17 property taxes within the general rate limitations set out in
18 subsection (d) at any appropriate level and are not subject to
19 the former voted rate limitation."

20 Sec. 7. G.S. 160-209(f) reads as rewritten:

21 "(f) With an approving vote of the people, any city may
22 increase the property tax rate limitation imposed in subsection
23 (c) and may call a referendum for that purpose. The referendum
24 may be held at the same time as any other city referendum or
25 election, but may not be otherwise held (i) on the day of any
26 federal, State, district, or county election, or (ii) within the
27 period of time beginning 30 days before and ending 30 days after
28 the day of any other city referendum or city election. The
29 election shall be conducted by the same board of elections that
30 conducts regular city elections.

31 The proposition submitted to the voters shall be substantially
32 in the following form: 'Shall the ~~effective~~ property tax rate
33 limitation applicable to the City/Town of be
34 increased from on the one hundred dollars (\$100.00)
35 value of property subject to taxation to on the one
36 hundred dollars (\$100.00) value of property subject to taxation?'

37 If a majority of those participating in the referendum approve
38 the proposition, the rate limitation imposed in subsection (c)
39 shall be increased for the city."

40 Sec. 8. This act is effective upon ratification.

Explanation of Proposal 4

Legislative Proposal 4 changes the date that starts the 30-day period in which a property owner has to appeal certain property tax decisions of the board of county commissioners. It also clarifies when a notice of appeal submitted by mail is considered received by the Property Tax Commission and deletes obsolete references in the local government statutes to assessment ratios.

A property owner has 30 days from the date of entry to file a notice of appeal with the Property Tax Commission from a decision of the board of county commissioners. The 30-day period begins on the date the decision is mailed to the property owner for an order of the board of equalization and review. Section 1 amends G.S. 105-290(e) to provide that the date on which the local board's decision is mailed starts the clock for either board.

Section 2 amends G.S. 105-290(g) to provide that a notice of appeal submitted by mail shall be deemed to be filed as of the date shown on the postmark. The current law provides that a notice is considered filed when it is received in the office of the Property Tax Commission. The existing language does not address notices submitted by mail. The change suggested in this section would prevent a taxpayer's right of appeal from being affected by how quickly the mail travels.

Sections 3 through 7 remove obsolete language from the city and county statutes. Prior to 1974, North Carolina did not use 100% assessment for property tax purposes. The board of county commissioners adopted a uniform percentage of the amount at which property in the county had been appraised as the value to be used in taxing the property. This percentage was known as the "assessment ratio". The local government statutes, in defining the property tax rate a city or county can levy, refers to the assessment ratio. When the State decided to assess all property at its true value, the application of any assessment ratio, and the corresponding language in these statutes, became unnecessary.

Section 8 provides that this act is effective upon ratification.

Fiscal Estimate - Legislative Proposal 4

Legislative Proposal 4 has no fiscal impact.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

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PROPOSAL 5 (89-LCX-330B)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Inheritance Tax Adjustment.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE AN INHERITANCE TAX EXEMPTION FOR STATE AND
3 LOCAL GOVERNMENT RETIREMENT BENEFITS PAID TO LINEAL DESCENDANTS
4 AND ANCESTORS AND TO LIMIT THE CURRENT INHERITANCE TAX
5 EXEMPTION FOR FEDERAL GOVERNMENT RETIREMENT BENEFITS TO ONLY
6 THOSE BENEFITS PAID TO LINEAL DESCENDANTS AND ANCESTORS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 105-3 reads as rewritten:
9 "**§ 105-3. Property exempt.**
10 The following property shall be exempt from taxation under
11 this Article:
12 (1) Property passing to or for the use of any one or
13 more of the following: the United States, any
14 state, territory or any political subdivision
15 thereof, or the District of Columbia, for
16 exclusively public purposes.
17 (2) Property passing to religious, charitable, or
18 educational corporations, or to churches,
19 hospitals, orphan asylums, public libraries,
20 religious, or charitable organizations, or passing
21 to any trustee or trustees for religious or
22 charitable purposes, where such religious,
23 charitable, or educational institutions,

- 1 corporations, churches, trusts, etc., are located
2 within the State and not conducted for profit.
- 3 (3) Property passing to religious, educational, or
4 charitable corporations, foundations or trusts, not
5 conducted for profit, incorporated or created or
6 administered under the laws of any other state: If
7 such other state levies no inheritance or estate
8 taxes on property similarly passing from residents
9 of such state to religious, educational or
10 charitable corporations, foundations or trusts
11 incorporated or created or administered under the
12 laws of this State; or if such corporation,
13 foundation or trust is one receiving and disbursing
14 funds donated in this State for religious,
15 educational or charitable purposes.
- 16 (4) The proceeds of all life insurance policies payable
17 to beneficiaries named in subdivisions (1), (2) and
18 (3) of this section. And also proceeds of all
19 policies of insurance and the proceeds of all
20 adjusted service certificates that have been or may
21 be paid by the United States government, or that
22 have been or may be paid on account of policies
23 required to be carried by the United States
24 government or any agency thereof, to the estate,
25 beneficiary, or beneficiaries of any person who has
26 served in the armed forces of the United States or
27 in the merchant marine during the first or second
28 World War or any subsequent military engagement;
29 and proceeds, not exceeding the sum of twenty
30 thousand dollars (\$20,000), of all policies of
31 insurance paid to the estate, beneficiary or
32 beneficiaries of any person whose death was caused
33 by enemy action during the second World War or any
34 subsequent military engagement involving the United
35 States. This provision will be operative only when
36 satisfactory proof that the death was caused by
37 enemy action is filed by the executor,
38 administrator, or beneficiary with the Secretary of
39 Revenue.
- 40 (5) The value of an annuity or other payment receivable
41 by any beneficiary (other than the executor) under
42 (a) an employees' trust (or under a contract or
43 insurance policy purchased by an employees' trust)
44 forming part of a pension, stock bonus, or

1 profit-sharing plan, which at the time of the
2 decedent's separation from employment (whether by
3 death or otherwise), or at the time of termination
4 of the plan if earlier, met the requirements of 26
5 U.S.C. § 401(a); or (b) a retirement annuity
6 contract purchased by an employer (and not by an
7 employees' trust) pursuant to a plan, which at the
8 time of decedent's separation from employment (by
9 death or otherwise), or at the time of termination
10 of the plan if earlier, met the requirements of 26
11 U.S.C. § 403(a) or § 403(b). If such amounts
12 payable after the death of the decedent under a
13 plan described in clause (a) or (b) are
14 attributable to any extent to payments or
15 contributions made by the decedent, no exemption
16 shall be allowed for that part of the value of such
17 amounts in the proportion that the total payments
18 or contributions made by the decedent bears to the
19 total payments or contributions made. For purposes
20 of the preceding sentence contributions or payments
21 made by the decedent's employer or former employer
22 under a trust or plan described in clause (a) or
23 (b) shall not be considered to be contributed by
24 the decedent nor shall any deductible employee
25 contributions within the meaning of 26 U.S.C. §
26 72(o)(5) be considered to have been contributed by
27 the decedent. For purposes of this subdivision,
28 contributions or payments on behalf of the decedent
29 while he was an employee within the meaning of 26
30 U.S.C. § 401(c)(1) made under a trust or plan
31 described in clause (a) or (b) shall, to the extent
32 allowable as a deduction under 26 U.S.C. § 404, be
33 considered to be made by a person other than the
34 decedent and, to the extent not so allowable, shall
35 be considered to be made by the decedent. Provided,
36 that the value of such annuities or other payments
37 receivable described in this subdivision shall not
38 be exempt unless the payments received therefrom
39 are or will be subject to income taxation under
40 Article 4 of this Subchapter, and if such payments
41 are not or will not be subject to income taxation
42 under Article 4 of this Subchapter the value of
43 such annuities or other payments receivable shall
44 be included in the gross value of the estate of the

- 1 decedent and taxable under the provisions of this
2 Article.
- 3 (6) The value of an annuity receivable by any
4 beneficiary (other than the executor) under:
- 5 a. An individual retirement account described in
6 section 408(a) of the Code,
7 b. An individual retirement annuity described in
8 section 408(b) of the Code, or
9 c. A retirement bond described in section 409(a)
10 of the Code.
- 11 If any payment to an account described in
12 paragraph a or for an annuity described in
13 paragraph b or a bond described in paragraph c
14 was not allowable as a deduction under 26
15 U.S.C. § 219 or § 220 and was not a rollover
16 contribution described in 26 U.S.C. §§
17 402(a)(5), 403(a)(4), 408(d)(3), or
18 409(b)(3)(C), the preceding sentence shall not
19 apply to that portion of the value of the
20 amount receivable under such account, annuity,
21 or bond (as the case may be) which bears the
22 same ratio to the total value of the amount so
23 receivable as the total amount which was paid
24 to or for such account, annuity, or bond and
25 which was not allowable as a deduction under
26 26 U.S.C. § 219 or § 220 and was not such a
27 rollover contribution bears to the total
28 amount paid to or for such account, annuity,
29 or bond. For purposes of this subdivision,
30 the term 'annuity' means an annuity contract
31 or other arrangement providing for a series of
32 substantially equal periodic payments to be
33 made to a beneficiary (other than the
34 executor) for his life or over a period
35 extending for at least 36 months after the
36 date of the decedent's death.
- 37 (7) The total value of proceeds of an annuity or other
38 payment receivable by any beneficiary (other than
39 the executor) under a military family protection,
40 or survivor benefit, plan, or other comparable
41 plan, pursuant to Chapter 73 of Title 10 of the
42 United States Code.
- 43 (8) The value of an annuity ~~receivable by any~~
44 ~~beneficiary, or other than the estate, payment~~

1 receivable by a Class A beneficiary under a federal
2 government employee retirement or deferred
3 compensation program to which the employee made
4 contributions during his working years,
5 contributions before retiring. The term 'deferred
6 compensation program' includes a plan under section
7 401(k) of the Code, a federal thrift savings plan,
8 and other deferred compensation arrangements. The
9 term 'government' means the United States, a state,
10 or a local unit of government.

11 (9) The total value of death benefits paid to a
12 decedent's estate or a named beneficiary from
13 voluntary pledges made by the North Carolina
14 Highway Patrol or other association of law-
15 enforcement officers employed by the State or a
16 county or municipality, if the benefits are paid
17 from an assessment against the members of the
18 association.

19 (10) Property passing to the surviving spouse of a
20 decedent."

21 Sec. 2. This act shall become effective September 1,
22 1990, and shall apply to the estates of decedents dying on or
23 after that date.

Explanation of Proposal 5

Legislative Proposal 5 makes changes in the inheritance tax law relating to taxation of certain retirement and deferred compensation benefits. North Carolina's inheritance tax is a tax on the value of property that is transferred as a result of the death of an individual. Where the property is transferred to a surviving spouse, it is exempt from tax. The inheritance tax statutes divide all other beneficiaries into three classes--A, B, and C. Class A beneficiaries, lineal ancestors and descendants of the decedent (including stepchildren and adopted descendants), are allowed a collective credit of \$26,150 against the tax imposed on property transferred to them. This credit effectively exempts at least the first \$500,000 in property transferred to Class A beneficiaries. Other relatives and unrelated beneficiaries are taxed on all property passing to them.

The inheritance tax law exempts the value of an annuity payable to a survivor under a federal employee retirement program. Until 1989, amounts received from State and local retirement programs and deferred compensation funds were also exempt from inheritance tax. These exemptions were repealed in 1989, however, after the United States Supreme Court held in Davis v. Michigan that a state cannot give its own former employees more favorable tax treatment than it gives former federal employees. The Revenue Laws Study Committee weighed three proposals to equalize the inheritance tax treatment of federal, state, and local government employees: (i) eliminate the federal exemption, (ii) restore a state and local exemption equal to the federal exemption, or (iii) restore a state and local exemption for both annuities and deferred compensation and add an exemption for federal deferred compensation payments. The Committee devised a compromise, Legislative Proposal 5, which would restore the inheritance tax exemption for state and local government retirement and deferred compensation payments upon death, extend the existing exemption to include federal government deferred compensation payments upon death, and limit both exemptions to amounts receivable by Class A beneficiaries only. Amounts receivable by other beneficiaries would not be exempt from inheritance tax. The bill would become effective September 1, 1990, and would apply to the estates of decedents dying on or after that date.

Explanation of Proposal:

For years there has been a State inheritance tax exemption for the value of an annuity paid to a survivor under a federal employee retirement program, but not for a deferred compensation plan. Prior to 1989, the state and local retirement system law provided a blanket exemption from all state taxes for retirement benefits (including deferred compensation) for state and local retirees.

The *Davis v. Michigan* decision provided that a state could provide no greater tax relief to the retirement pay of its own employees (including local government) than that granted to federal retirees. The effect of this decision was to force a decision on whether to allow a full exclusion to federal deferred compensation benefits for survivors or to eliminate the exclusion for state and local retirees. As part of the pension tax re-write in response to *Davis*, the state and local exclusion was eliminated.

Transfers to spouses are totally exempt from the inheritance tax. In general, the first \$500,000 of property (including the present value of an annuity) transferred to Class A beneficiaries (lineal ancestors, lineal descendants) is exempt. Class B beneficiaries (other relatives) and Class C beneficiaries (non-relatives) receive no exemption.

Explanation of Proposal:

- (1) Extends the existing inheritance tax exemption for survivors of federal retirees to include the present value of deferred compensation benefits.
- (2) Limits the inheritance tax exemption for the value of federal, state, and local survivor annuities and deferred compensation plans to Class A beneficiaries.

Effective Date:

Deaths occurring on or after September 1, 1990.

Fiscal Effect:

Because estates are allowed nine months to file an inheritance tax return after a death, the enactment of the proposal would have no impact on General Fund tax revenue for the current 1989-91 biennium.

The impact on future years will be insignificant because:

- (1) Most survivor annuity and deferred comp beneficiaries go to the spouse (fully exempt from tax)
- (2) There is a \$500,000 exemption for transfers to other Class A beneficiaries
- (3) Eliminating Class B beneficiaries from the exclusion will help offset any revenue loss from extending the federal exclusion to deferred compensation benefits.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

PROPOSAL 6 (89-LC-341)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Fuel Tax Bond Increase.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE MAXIMUM BOND THAT MAY BE REQUIRED OF FUEL
3 DISTRIBUTORS AND SUPPLIERS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-433 reads as rewritten:
6 "**§ 105-433. Application for license as distributor.**
7 Any distributor engaged in business on April 1, 1931, shall,
8 within 30 days thereafter, and any other distributor shall, prior
9 to the commencement of doing business, file a duly acknowledged
10 application for a license with the Secretary of Revenue on a form
11 prescribed and furnished by him setting forth the name under
12 which such distributor transacts or intends to transact business
13 within this State, the address of each place of business and a
14 designation of the principal place of business. If such
15 distributor is a firm or association, the application shall set
16 forth the name and address of each person constituting the firm
17 or association, and if a corporation, the names and addresses of
18 the principal officers and such other information as the
19 Secretary of Revenue may require. Each distributor shall at the
20 same time file a bond in such amount, ~~not exceeding forty~~
21 ~~thousand dollars (\$40,000)~~ in such ~~form~~ form, and with such
22 surety or sureties as may be required by the Secretary of
23 Revenue, conditioned upon the rendition of the reports and the
24 payment of the tax hereinafter provided for. The amount of the

1 bond required by the Secretary may not exceed two times the
2 distributor's average monthly tax liability under this Article
3 or, in the case of an initial bond, two times the distributor's
4 estimated average monthly tax liability under this Article, as
5 determined by the Secretary. A distributor who is also required
6 to be bonded under G.S. 105-449.5 as a supplier of special fuels
7 may file a single bond, under either this section or under G.S.
8 105-449.5, for the combined amount required under these sections
9 ~~but not exceeding eighty thousand dollars (\$80,000)~~ and
10 conditioned upon compliance with the requirements of Article 36
11 and Article 36A of this Subchapter. A distributor required to
12 file a bond under this section shall, within 30 days after
13 receiving a notice from the Secretary of Revenue, file an
14 additional bond in the amount requested by the Secretary. The
15 amount of the initial bond and any additional bonds filed by the
16 distributor, however, may not exceed the limits set in this
17 section. Upon approval of the application and bond, the
18 Secretary of Revenue shall issue to the distributor a
19 nonassignable license with a duplicate copy for each place of
20 business of said distributor in this State, which shall be
21 displayed in a conspicuous place at each such place of business
22 and shall continue in force until surrendered or canceled. No
23 distributor shall sell, offer for sale, or use any motor fuels
24 within this State until such license has been issued. Any
25 distributor failing to comply with or violating any of the
26 provisions of this section shall be guilty of a misdemeanor and
27 upon conviction thereof shall be fined not less than one hundred
28 dollars (\$100.00), nor more than five thousand dollars (\$5,000),
29 or imprisonment for not more than 24 months, or both."

30 Sec. 2. G.S. 105-449.5 reads as rewritten:

31 "**§ 105-449.5. Supplier to file bond.**

32 A supplier's license shall not be issued until the applicant
33 has filed with the Secretary a bond in the approximate sum of
34 ~~three two~~ times the average monthly tax due to be paid by such
35 ~~supplier,~~ the supplier, as determined by the Secretary, but the
36 amount of the bond shall in no case be less than five hundred
37 dollars (\$500.00). ~~(\$500.00) nor more than forty thousand dollars~~
38 ~~(\$40,000).~~ Such bond shall be in such form and with such surety
39 or sureties as may be required by the Secretary, conditioned upon
40 making proper reports and paying the tax provided for in this
41 Article, and otherwise complying with the provisions of this
42 Article. A supplier who is also required to be bonded under G.S.
43 105-433 as a distributor of motor fuels may file a single bond,
44 under either this section or under G.S. 105-433 for the combined

1 amount required under these sections, ~~sections but not exceeding~~
2 ~~eighty thousand dollars (\$80,000)~~, and conditioned upon
3 compliance with the requirements of Article 36 and Article 36A of
4 this Subchapter. A supplier required to file a bond under this
5 section shall, within 30 days after receiving a notice from the
6 Secretary, file an additional bond in the amount requested by the
7 Secretary. The amount of the initial bond and any additional
8 bonds filed by the supplier, however, may not exceed the limits
9 set in this section."
10 Sec. 3. This act shall become effective January 1,
11 1991.

Explanation of Proposal 6

Legislative Proposal 6 increases the maximum bond that may be required of fuel distributors and suppliers. Distributors of motor fuel are subject to the Gasoline Tax under Article 36 of Chapter 105 of the General Statutes. Distributors must obtain a license from the Department of Revenue and post a bond in the amount required by the Secretary of Revenue, up to a maximum of \$40,000. Suppliers of special fuels are subject to the Special Fuels Tax under Article 36A of Chapter 105 of the General Statutes. Suppliers must obtain a license from the Department of Revenue and post a bond in the approximate sum of three times the supplier's average monthly tax liability, up to a maximum of \$40,000. Distributors who are also suppliers may obtain a single bond to cover both taxes, up to a maximum bond of \$80,000.

The Department of Revenue notified the Revenue Laws Study Committee that one of its taxpayers recently defaulted on over \$1,000,000 in gasoline tax liability and had filed for bankruptcy. The State will probably be unable to recover most of this liability beyond the \$80,000 bond coverage. Many other taxpayers have monthly liabilities well in excess of the maximum bond amounts. The Department of Revenue stated that substantial amounts of State tax proceeds may be at risk due to the increasing number of delinquencies and bankruptcies of fuel distributors and suppliers. The Department suggested that a maximum bond requirement of three times the taxpayer's average monthly liability would be appropriate to protect the State's interests.

A representative of the Petroleum Marketers' Association, Donald M. Ward, informed the Committee that this increase in the maximum bond might harm small businesses. The Committee directed Mr. Ward to work with the Department of Revenue to craft a proposal that would protect the interests of the State without placing an undue burden on small businesses. The Committee adopted a compromise, Legislative Proposal 6, that would increase the maximum bond liability to two times the taxpayer's average monthly liability. The bill would become effective January 1, 1991. If the Department of Revenue and the Petroleum Marketers' Association develop another compromise that might better balance the needs of the State and the needs of small businesses, that compromise could be submitted as a committee substitute for Legislative Proposal 6 during the 1990 Session.

Fiscal Estimate - Legislative Proposal 6

Legislative Proposal 6 has no fiscal impact.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

PROPOSAL 7 (90-LJ-R12)
THIS IS A DRAFT

Short Title: No Sales Tax on Small Power Producer (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW A SALES TAX EXEMPTION FOR FUEL USED BY A SMALL
3 POWER PRODUCER TO GENERATE ELECTRICITY.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.13 is amended by adding a new
6 subdivision to read:
7 "(8a) Sales to a small power production facility, as
8 defined in 16 U.S.C. § 796(17)(A), of fuel
9 used by the facility to generate electricity."
10 Sec. 2. This act shall become effective July 1, 1990.

Explanation of Proposal 7

Proposal 7 creates a sales tax exemption for fuel used by a small power producer to generate electricity. Without the exemption, the fuel would be subject to sales tax at the rate of 1% under G.S. 105-164.4(a)(1c)d.

The United States Code, in 16 U.S.C. § 796(17)(A), defines a "small power production facility" as a facility that produces energy by using primarily biomass waste, renewable resources, geothermal resources, or any combination of these and has a power production capacity of not more than 80 megawatts. The purpose of the federal law is to encourage the production of energy from alternative energy sources.

A small power production facility is under construction in Craven County that will use wood chips as its source of fuel. Representatives of the facility addressed the Revenue Laws Study Committee and requested that the wood chips that will be used by the facility be exempted from sales tax. The spokesperson stressed that the wood chips should be treated the same as coal, which is exempt from sales tax under an exemption for products of the mine or the forest in their original state.

The Committee considered the current sales tax law on fuel. As noted, coal used to generate electricity is exempt from sales tax under G.S. 105-164.13(3). Piped natural gas used to generate electricity is subject to State sales tax at the rate of 3% and is not subject to local sales tax. Other fuel used to generate electricity is subject to State sales tax under G.S. 105-164.4(a)(1c)d. at the rate of 1% and is not subject to local sales tax.

The Committee decided to recommend the exemption as part of a policy of encouraging the use of alternative fuels. Also, the Committee found little difference between the wood chips intended for use by the Craven facility and coal. The exemption, however, applies to any fuel used by a small power production facility and could include solid waste in the event a facility pays for solid waste used to convert to electricity. The proposal becomes effective July 1, 1990.

PROPOSAL 7

FISCAL REPORT
FISCAL RESEARCH DIVISION
APRIL 17, 1990

Explanation of Proposal:

Proposal 7 exempts from sales tax fuel used by a small power producer to generate electricity.

Effective Date:

July 1, 1990.

Fiscal Effect:

This proposal has no immediate fiscal effect because there are no operating small power producers that purchase fuel. The few small power producers currently in operation use solid waste or methane gas produced from solid waste and do pay for the waste or the gas.

When the Craven County project becomes operational, there will be an annual loss of State sales tax revenue of \$60,950 and no loss of local sales tax revenue because the exempt fuel would have been subject to State sales tax only. If all the other five small power producer projects with plans to use fuel that is potentially subject to sales tax become operational, the annual loss in State sales tax revenue could be an additional \$30,000, for a total of \$90,950.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

PROPOSAL 8 (90-LJ-R13)
THIS IS A DRAFT

Short Title: Modify Taxation of N.C. Enterprise Corp. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE TAXATION OF A NORTH CAROLINA ENTERPRISE
3 CORPORATION AND TO EXTEND THE TAX CREDIT FOR INVESTMENTS IN AN
4 ENTERPRISE CORPORATION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-125 reads as rewritten:
7 "**§ 105-125. Corporations not mentioned.**
8 None of the taxes levied in this Article shall apply to
9 charitable, religious, fraternal, benevolent, scientific or
10 educational corporations, not operating for a profit; nor to
11 insurance companies; nor to mutual ditch or irrigation
12 associations, mutual or cooperative telephone associations or
13 companies, mutual canning associations, cooperative breeding
14 associations, or like organizations or associations of a purely
15 local character deriving receipts solely from assessments, dues,
16 or fees collected from members for the sole purpose of meeting
17 expenses; nor to cooperative marketing associations operating
18 solely for the purpose of marketing the products of members or
19 other farmers, which operations may include activities which are
20 directly related to such marketing activities, and turning back
21 to them the proceeds of sales, less the necessary operating
22 expenses of the association, including interest and dividends on
23 capital stock on the basis of the quantity of product furnished
24 by them; nor to production credit associations organized under

1 the act of Congress known as the Farm Credit Act of 1933; nor to
2 business leagues, boards of trade, clubs organized and operated
3 exclusively for pleasure, recreation and other nonprofitable
4 purposes, civic leagues operated exclusively for the promotion of
5 social welfare, or chambers of commerce and merchants'
6 associations not organized for profit, and no part of the net
7 earnings of which inures to the benefit of any private
8 stockholder, individual or other corporations; nor to
9 corporations or organizations, such as condominium associations,
10 homeowner associations or cooperative housing corporations not
11 organized for profit, the membership of which is limited to the
12 owners or occupants of residential units in the condominium,
13 housing development, or cooperative housing corporation, and
14 operated exclusively for the management, operation, preservation,
15 maintenance or landscaping of the common areas and facilities
16 owned by such corporation or organization or its members situated
17 contiguous to such houses, apartments or other dwellings or for
18 the management, operation, preservation, maintenance and repair
19 of such houses, apartments or other dwellings owned by the
20 corporation or organization or its members, but only if no part
21 of the net earnings of such corporation or organization inures
22 (other than through the performance of related services for the
23 members of such corporation or organization) to the benefit of
24 any member of such corporation or organization or other person.
25 In addition, absent a specific provision to the contrary, the
26 taxes levied in this Article do not apply to any organization
27 that is exempt from federal income tax under the Code.

28 Provided, that each such corporation must, upon request by the
29 Secretary of Revenue, establish in writing its claim for
30 exemption from said provisions. The provisions of G.S. 105-122
31 and 105-123 shall apply to electric light, power, gas, water,
32 Pullman, sleeping and dining car, express, telegraph, telephone,
33 motor bus, and truck corporations to the extent and only to the
34 extent that the franchise taxes levied in G.S. 105-122 and
35 105-123 exceed the franchise taxes levied in other sections of
36 this Article or schedule; except that the provisions of G.S.
37 105-122 and 105-123 shall not apply to businesses taxed under
38 G.S. 105-120.1. The exemptions in this section shall apply only
39 to those corporations specially mentioned, and no other.

40 ~~Provided, that any corporation doing business in North~~
41 ~~Carolina which in the opinion of the Secretary of Revenue of~~
42 ~~North Carolina, qualifies as a "regulated investment company"~~
43 ~~under section 851 of the Code or as a "real estate investment~~
44 ~~trust" under the provisions of section 856 of the Code and which~~

~~1 files with the North Carolina Department of Revenue its election~~
~~2 to be treated as a "regulated investment company" or as a "real~~
~~3 estate investment trust," shall in determining its basis for~~
~~4 franchise tax be allowed to~~ The following corporations may
5 deduct the aggregate market value of its their investments in the
6 stocks, bonds, debentures, or other securities or evidences of
7 debt of other corporations, ~~partnerships, individuals,~~
8 ~~municipalities, governmental agencies or governments.~~ entities in
9 determining their basis for franchise tax:

10 (1) A regulated investment company under section 851 of
11 the Code that files an election with the Department
12 to be treated as a regulated investment company.

13 (2) A real estate investment trust under section 856 of
14 the Code that files an election with the Department
15 to be treated as a real estate investment trust.

16 (3) A North Carolina Enterprise Corporation established
17 under Article 3 of G.S. Chapter 53A."

18 Sec. 2. G.S. 105-130.7(3) reads as rewritten:

19 "~~(3) A corporation shall be allowed to deduct such~~
20 ~~proportionate part of dividends received by it from~~
21 ~~a regulated investment company or a real estate~~
22 ~~investment trust, as defined in G.S. 105-130.12, as~~
23 ~~represents and corresponds to income received by~~
24 ~~such regulated investment company or real estate~~
25 ~~investment trust which would not be taxed by this~~
26 ~~State if received directly by the corporation.~~ may
27 deduct dividends received from a corporation listed
28 in this subdivision to the extent the dividends are
29 attributable to income that would be exempt from
30 tax under this Division if received by the
31 corporation claiming the deduction:

32 a. A regulated investment company under section
33 851 of the Code that files an election with
34 the Department to be treated as a regulated
35 investment company.

36 b. A real estate investment trust under section
37 856 of the Code that files an election with
38 the Department to be treated as a real estate
39 investment trust.

40 c. A North Carolina Enterprise Corporation
41 established under Article 3 of G.S. Chapter
42 53A."

43 Sec. 3. G.S. 105-130.12 reads as rewritten:

1 ~~"§ 105-130.12. Regulated investment companies and real estate~~
2 ~~investment trusts. Corporations taxed on undistributed income.~~

3 ~~Any organization or trust which, in the opinion of the~~
4 ~~Secretary of Revenue of North Carolina, qualifies as either a~~
5 ~~"regulated investment company" under section 851 of the Code or~~
6 ~~as a "real estate investment trust" under section 856 of the Code~~
7 ~~and which files with the North Carolina Department of Revenue its~~
8 ~~election to be treated as a "regulated investment company," or as~~
9 ~~a "real estate investment trust" The following corporations shall~~
10 ~~be taxed under this Division upon only that part of its their net~~
11 ~~income which that is not distributed or declared for distribution~~
12 ~~to shareholders during the income year or by the time required by~~
13 ~~law for the filing of the return for the income year including~~
14 ~~the period of any extension of time granted for filing such the~~
15 ~~return. return:~~

16 (1) A regulated investment company under section 851 of
17 the Code that files an election with the Department
18 to be treated as a regulated investment company.

19 (2) A real estate investment trust under section 856 of
20 the Code that files an election with the Department
21 to be treated as a real estate investment trust.

22 (3) A North Carolina Enterprise Corporation established
23 under Article 3 of G.S. Chapter 53A."

24 Sec. 4. G.S. 105-212(c) reads as rewritten:

25 ~~"(c) Any corporation or trust doing business in North Carolina~~
26 ~~which in the opinion of the Secretary of Revenue of North~~
27 ~~Carolina qualifies as a "regulated investment company" under~~
28 ~~section 851 of the Code or as a "real estate investment trust"~~
29 ~~under the provisions of section 856 of the Code and which files~~
30 ~~with the North Carolina Department of Revenue its election to be~~
31 ~~treated as a "regulated investment company" or "real estate~~
32 ~~investment trust," shall not be subject to any of the taxes~~
33 ~~levied in this Article or schedule. The following entities are~~
34 ~~exempt from the taxes levied in this Article:~~

35 (1) A regulated investment company under section 851 of
36 the Code that files an election with the Department
37 to be treated as a regulated investment company.

38 (2) A real estate investment trust under section 856 of
39 the Code that files an election with the Department
40 to be treated as a real estate investment trust.

41 (3) A North Carolina Enterprise Corporation established
42 under Article 3 of G.S. Chapter 53A."

43 Sec. 5. G.S. 105-163.011(a) reads as rewritten:

1 "(a) Corporations. -- Subject to the limitations contained in
2 G.S. 105-163.012, a corporation that invests in the equity
3 securities of a North Carolina Capital Resource Corporation, a
4 North Carolina Enterprise Corporation, or a qualified investment
5 organization is allowed as a credit against the income tax
6 imposed by Division I of this ~~Article or the~~ Article, the
7 franchise tax imposed by G.S. 105-116, 105-120.2, and ~~105-122~~
8 ~~105-122~~, or the gross premiums tax imposed by G.S. 105-228.5 and
9 105-228.8 for the taxable year an amount equal to twenty-five
10 percent (25%) of the amount invested or seven hundred fifty
11 thousand dollars (\$750,000), whichever is less. The credit may
12 not be taken for the year in which the investment is made but
13 shall be taken for the taxable year beginning during the calendar
14 year following the calendar year in which the investment was
15 made."

16 Sec. 6. G.S. 105-163.012(a) reads as rewritten:

17 "(a) The credit allowed a taxpayer under G.S. 105-163.011 may
18 not exceed the amount of income tax imposed by Division I or II
19 of this ~~Article or by~~ Article, the amount of franchise tax
20 imposed by Article 3 of this Chapter, or the amount of gross
21 premiums tax imposed by Article 8B of this Chapter, as
22 appropriate, for the taxable year reduced by the sum of all other
23 credits allowable except tax payments made by or on behalf of the
24 taxpayer. The amount of unused credit allowed under G.S.
25 105-163.011 may be carried forward for the next five succeeding
26 years."

27 Sec. 7. This act is effective for taxable years
28 beginning on or after January 1, 1990.

Explanation of Proposal 8

Legislative Proposal 8 makes two changes in the laws enacted in 1988 concerning North Carolina Enterprise Corporations. First, it changes the way a North Carolina Enterprise Corporation is taxed under the corporate income tax, the franchise tax, and the intangibles tax to treat an Enterprise Corporation like a regulated investment company or a real estate investment trust rather than like a typical corporation. Second, it extends the tax credit allowed for those who invest in a North Carolina Enterprise Corporation to include the gross premiums tax payable by insurance companies.

A North Carolina Enterprise Corporation is a corporation organized under Chapter 53A of the General Statutes to, in effect, provide venture capital for economic development in rural North Carolina. Since the enactment of the authorizing legislation in 1988, one Enterprise Corporation has been established. The Corporation has received subscriptions for a total of \$20 million in capital stock, \$10 million of which is from the State. The State encourages investment in the Corporation by others by allowing a tax credit against income tax and franchise tax of 25% of the amount invested or \$750,000, whichever is less.

Changing the laws to treat the Enterprise Corporation as a regulated investment company or a real estate investment trust will have the following effects:

- (1) For franchise tax, the change will reduce the tax base of the Corporation by the market value of its investments in stocks, bonds, and debentures.
- (2) For corporate income taxes, the change will exempt from tax the income of the Corporation that is distributed or set aside for distribution to investors in the Corporation.
- (3) For intangible personal property taxes, the change will exempt stocks, bonds, and evidences of debt owned by the Corporation from tax.

Extending the tax credit to include the gross premiums tax will allow insurance companies that invest in the Enterprise Corporation to reduce the gross premiums taxes payable by them by 25% of the amount invested or \$750,000, whichever is less. Insurance companies do not pay corporate income tax or franchise tax and therefore do not have the same incentive under current law as other corporations and financial institutions to invest in the Enterprise Corporation. Extension of the credit to insurance

companies does not affect the annual \$12 million ceiling on the total credits for investments in the Enterprise Corporation.

The Revenue Laws Study Committee considered this proposal at the request of the North Carolina Enterprise Corporation. The Committee endorses the Corporation and its purpose but was somewhat hesitant to recommend what appears to be tax exemptions for fear of encouraging other entities to request similar treatment. The Committee nevertheless decided to recommend this proposal and to present the issue to the 1990 Session.

In adopting the recommendation, the Committee urged the Corporation to consider amending its authorizing legislation so that the Corporation can be organized as a limited partnership rather than as a corporation. Organization as a partnership would benefit the Corporation by eliminating the issue of federal or State corporate income tax and state franchise tax and would not create the appearance of granting exemptions from tax.

PROPOSAL 8

FISCAL REPORT

FISCAL RESEARCH DIVISION

APRIL 17, 1990

Explanation of Proposal:

Proposal 8 makes the following changes concerning a North Carolina Enterprise Corporation:

- (1) Reduces the franchise tax base of the North Carolina Enterprise Corporation by the market value of its investments in stocks, bonds, and debentures.
- (2) Exempts from income tax income of the North Carolina Enterprise Corporation that is either distributed to or set aside for distribution to shareholders of the Corporation.
- (3) Makes clear that stocks, bonds, and evidences of debt owned by the North Carolina Enterprise Corporation are exempt from taxes on intangible personal property.
- (4) Provides insurance companies with a credit against the gross premiums tax of 25% of the amount invested in the North Carolina Enterprise Corporation, not to exceed \$750,000.

Effective Date:

Taxable years beginning on or after January 1, 1990.

Fiscal Effect:

For FY 1990-91, the maximum revenue loss would be less than \$10,000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

PROPOSAL 9 (89-LCX-325)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Revenue Laws Tech Changes.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 105-33(d) reads as rewritten:
5 "(d) The State license issued under G.S. 105-41, 105-42,
6 105-45, 105-53, 105-54, 105-55, ~~105-57~~, 105-58, and 105-91 shall
7 be and constitute a personal privilege to conduct the profession
8 or business named in the State license, shall not be transferable
9 to any other person, firm or corporation and shall be construed
10 to limit the person, firm or corporation named in the license to
11 conducting the profession or business and exercising the
12 privilege named in the State license to the county and/or city
13 and location specified in the State license, unless otherwise
14 provided in this Article or schedule. Other license issued for a
15 tax year for the conduct of a business at a specified location
16 shall upon a sale or transfer of the business be deemed a
17 sufficient license for the succeeding purchaser for the conduct
18 of the business specified at such location for the balance of the
19 tax year: Provided, that if the holder of a license under this
20 schedule moves the business for which a license has been paid to
21 another location, a new license may be issued to the licensee at
22 a new location for the balance of the license year, upon
23 surrender of the original license for cancellation and the

1 payment of a fee of five dollars (\$5.00) for each license
2 certificate reissued."

3 Sec. 2. G.S. 105-38(h) reads as rewritten:

4 "(h) Counties, cities, and towns may levy a license tax on the
5 business taxed under this section not in excess of one half of
6 the license tax levied by the State, but shall not levy a parade
7 tax or a tax under ~~subsection (h) [subsection (g)]~~ subsection (g)
8 of this section."

9 Sec. 3. G.S. 105-53(i) reads as rewritten:

10 "(i) Display and Possession of Licenses and Identification. --
11 An itinerant merchant shall keep both the license required by
12 this section and the retail sales tax license conspicuously and
13 prominently displayed, so as to be visible for inspection by
14 patrons of the itinerant merchant at the places or locations at
15 which the goods are to be sold or offered for sale. A peddler
16 shall have the license required by this section and the retail
17 sales tax license with him at all times he offers goods for sale
18 and must produce them upon the request of any customer, State
19 ~~and/or~~ or local revenue agent, or law enforcement agent. A
20 specialty market vendor shall keep the retail sales tax license
21 conspicuously and prominently displayed, so as to be visible for
22 inspection by patrons of the specialty market vendor at the
23 places or locations at which the goods are to be sold or offered
24 for sale. A specialty market operator shall have the license
25 required by this section available for inspection during all
26 times that the specialty market is open and must produce it upon
27 the request of any customer, State ~~and/or~~ or local revenue agent,
28 or law enforcement agent.

29 Upon the request of any customer, State ~~and/or~~ or local revenue
30 agent, or law enforcement agent, a peddler, itinerant merchant,
31 specialty market operator, or specialty market vendor shall
32 provide its name and permanent address. If the peddler,
33 itinerant merchant, specialty market operator, or specialty
34 market vendor is not a corporation, he shall, upon the request of
35 any customer, State ~~and/or~~ or local revenue agent, or law
36 enforcement agent, provide a valid driver's license, a special
37 identification card issued under G.S. 20-37.7, military
38 identification, or a passport bearing a physical description of
39 the person named reasonably describing the peddler, itinerant
40 merchant, specialty market operator, or specialty market vendor.
41 If the peddler, itinerant merchant, specialty market operator, or
42 specialty market vendor is a corporation, it shall, upon the
43 request of any customer, State ~~and/or~~ or local revenue agent, or
44 law enforcement agent, give the name and registered agent of the

1 corporation and the address of the registered office of the
2 corporation, as filed with the North Carolina Secretary of
3 State."

4 Sec. 4. G.S. 105-90.1 is repealed.

5 Sec. 5. G.S. 105-109.1 reads as rewritten:

6 "**§ 105-109.1. Interest.**

7 With respect to the taxes on gross receipts levied in G.S.
8 105-37.1(a), ~~105-38(7)~~, ~~105-39(c)~~ 105-38(f), and 105-65.1(b)(2),
9 and the tax on installment paper dealers levied in G.S.
10 105-83(b), all such taxes, including assessments of taxes or
11 additional taxes, shall bear interest from the time such taxes
12 were due to have been paid until paid, at rates established
13 pursuant to G.S. 105-241.1(i)."

14 Sec. 6. G.S. 105-113.110 reads as rewritten:

15 "**§ 105-113.110. Violations of Article a felony.**

16 (a) A dealer who ~~violates this Article~~ possesses marijuana or
17 any other controlled substance or counterfeit controlled
18 substance upon which the tax due under this Article has not been
19 paid, as evidenced by a stamp, is guilty of a Class I felony, and
20 is subject to an additional penalty of one hundred percent (100%)
21 of any tax due from the dealer. felony.

22 (b) Notwithstanding any other provision of law, no prosecution
23 for a violation of this Article shall be barred before the
24 expiration of six years after the date of the violation."

25 Sec. 7. Article 2D of Chapter 105 of the General
26 Statutes is amended by adding a new section to read:

27 "**§ 105-113.110A. Interest and penalty.**

28 The tax due under this Article shall bear interest at the rate
29 established pursuant to G.S. 105-241.1(i) from the date due until
30 paid. In addition, a dealer who neglects, fails, or refuses to
31 pay the tax due under this Article is liable for a penalty equal
32 to one hundred percent (100%) of the tax."

33 Sec. 8. G.S. 114-18.1(a) reads as rewritten:

34 "(a) Every local law enforcement agency and every State law
35 enforcement agency shall, within 48 hours after making an arrest
36 of an individual in possession of ~~a controlled substance or a~~
37 ~~counterfeit controlled substance,~~ more than 42.5 grams of
38 marijuana, seven or more grams of any other controlled substance
39 or counterfeit controlled substance that is sold by weight, or 10
40 or more dosage units of any other controlled substance or
41 counterfeit controlled substance that is not sold by weight, upon
42 which a North Carolina controlled substance tax stamp is not
43 affixed, report the arrest to the State Bureau of Investigation.
44 Every local law enforcement agency and every State law

1 enforcement agency shall, within 48 hours after seizing any of
2 the above specified quantities of a non-tax-paid controlled
3 substance or a counterfeit controlled substance, report the
4 seizure to the State Bureau of Investigation. The ~~report~~ report,
5 to be in the form prescribed by the Secretary of Revenue, shall
6 include the time and place of the arrest or seizure, the ~~amount~~
7 ~~and location~~ amount, location, and kind of the substance, and the
8 ~~identification~~ identification, including the social security
9 number, of any individual in possession of the ~~substance.~~
10 substance, and any other information prescribed by the Secretary
11 of Revenue."

12 Sec. 9. G.S. 114-19(b) reads as rewritten:

13 "(b) The State Bureau of Investigation shall, on a daily
14 basis, notify the Department of Revenue of all reports it
15 receives pursuant to G.S. 114-18.1 of arrests and seizures
16 involving non-tax-paid controlled substances and counterfeit
17 controlled substances. The Bureau shall also, as soon as
18 practicable, provide the Department with any additional
19 information it receives regarding such arrests and seizures."

20 Sec. 10. G.S. 105-116(g) reads as rewritten:

21 "(g) The Secretary of Revenue shall determine the total gross
22 receipts derived from the sale within each municipality of the
23 commodities or services described in this section, except water
24 and sewerage services, and shall distribute to each municipality
25 an amount equal to a tax of three and nine hundredths percent
26 (3.09%) of the gross receipts from sales within the municipality.
27 ~~In determining the amount to be distributed to a municipality~~
28 ~~pursuant to this subsection, gross receipts from sales within a~~
29 ~~municipality do not include receipts from sales of piped gas to a~~
30 ~~manufacturer for use as an ingredient or component part of a~~
31 ~~manufactured product.~~

32 As soon as practicable after the date on which each quarterly
33 payment of taxes is due under this section, the Secretary of
34 Revenue shall certify to the State Disbursing Officer and to the
35 State Treasurer the amount distributable to each municipality
36 under this section. The State Disbursing Officer shall thereupon
37 issue a warrant on the State Treasurer to each municipality in
38 the amount so certified.

39 So long as there is a distribution to municipalities of the
40 amount herein provided from the tax imposed by this section, no
41 municipality shall impose or collect any greater franchise,
42 privilege or license taxes, in the aggregate, on the businesses
43 taxed under this section, than was imposed and collected on or
44 before January 1, 1947. If any municipality shall have collected

1 any privilege, license or franchise tax between January 1, 1947,
2 and April 1, 1949, in excess of the tax collected by it prior to
3 January 1, 1947, then upon distribution of the taxes imposed by
4 this section to municipalities, the amount distributable to any
5 municipality shall be credited with such excess payment."

6 Sec. 11. G.S. 105-120(d) reads as rewritten:

7 "(d) The Secretary of Revenue shall ascertain the total gross
8 receipts derived from local business conducted within each
9 municipality in this State by persons, firms or corporations
10 taxed under this section, and out of the tax levied by this
11 section, an amount equal to a tax of three and nine hundredths
12 percent (3.09%) of the gross receipts from local business
13 conducted within any municipality shall be distributed to such
14 municipality. ~~When a person, firm or corporation taxed under this~~
15 ~~section properly receives a credit on said taxes under the~~
16 ~~proviso in subsection (b) because of payments made to a~~
17 ~~municipality, such municipality's distributive share of the taxes~~
18 ~~levied by this section shall be reduced by the amount of the~~
19 ~~credit properly received by said person, firm or corporation. If~~
20 ~~the credit received under the proviso is greater than the~~
21 ~~municipality's distributive share of the taxes levied under this~~
22 ~~section, no distribution to such municipality shall be made.~~

23 As soon as practicable after the date on which each quarterly
24 payment of taxes is due under this section, the Secretary of
25 Revenue shall certify to the State Disbursing Officer and to the
26 State Treasurer the amount distributable to each municipality
27 under this section. The State Disbursing Officer shall thereupon
28 issue a warrant on the State Treasurer to each municipality in
29 the amount so certified.

30 In determining what constitutes local business conducted within
31 a municipality for the purposes of this subsection, all business
32 originating within a municipality, except long-distance calls,
33 shall be construed as local business.

34 The Department of Revenue is hereby authorized and empowered to
35 require any and all persons, firms or corporations taxed under
36 this section to file additional reports disclosing the gross
37 receipts derived from local business as herein defined and the
38 gross receipts from long-distance business.

39 If the records of the corporation taxed under this section do
40 not readily disclose allocation to municipalities of revenues
41 from local business as above defined, the Secretary of Revenue
42 shall prescribe some practicable method of allocating such local
43 revenues."

44 Sec. 12. G.S. 105-130.7(1) reads as rewritten:

1 "(1) As soon as may be practicable after ~~the close~~ September 30
2 of each ~~calendar~~ year, the Secretary of Revenue shall determine
3 from ~~each the~~ corporate income tax return filed ~~with him~~ during
4 ~~such year, and due from the filing corporation~~ the year ending
5 September 30 by each corporation required to file a return during
6 ~~such year, that period~~ the proportion of the entire net income or
7 loss of the corporation allocable to this State under the
8 provisions of G.S. 105-130.4, except as provided ~~herein; if~~
9 herein. If a corporation has a net income in North Carolina and
10 a net loss from all sources wherever located, or if a corporation
11 has a net loss in North Carolina and a net income from all
12 sources wherever located, the Secretary shall require the use of
13 the allocation fraction determined under the provisions of G.S.
14 105-130.4. A corporation which is a stockholder in any such
15 corporation shall be allowed to deduct the same proportion of the
16 dividends received by it from such corporation during its income
17 year ending ~~at on~~ or after ~~the end of such calendar year.~~
18 September 30. No deduction shall be allowed for any part of any
19 dividend received by such corporation from any corporation which
20 filed no that was required to file an income tax return with the
21 Secretary of Revenue during such calendar year, the year ending
22 September 30 but failed to file the return. In the case of
23 dividends received from a corporation that was not required to
24 file a return during the year ending September 30, the proportion
25 of dividends deductible by the stockholder shall be determined by
26 the Secretary from the best information available."

27 Sec. 13. G.S. 105-130.27(g) reads as rewritten:

28 "(g) Expiration. This section applies only to costs incurred
29 during taxable years beginning prior to January 1, ~~1993.~~ 1994."

30 Sec. 14. G.S. 105-130.40(b1) reads as rewritten:

31 "(b1) Eligibility. -- A corporation is eligible for the tax
32 credit allowed by this section only if it obtained a credit under
33 this section for taxable year 1988 or the Department of ~~Commerce~~
34 Economic and Community Development determines that it engages in
35 the manufacturing of goods, or that it engages in an industrial
36 activity such as the processing of foods, raw materials,
37 chemicals and process agents, goods in process, or ~~of~~ finished
38 products."

39 Sec. 15. G.S. 105-134.1(11) reads as rewritten:

40 "(11) Person. An individual, a fiduciary, a
41 ~~partnership, or a corporation,~~ or a partnership.
42 The term includes an officer or employee of a
43 corporation or a member or employee of a
44 partnership who, as officer, employee, or member,

1 is under a duty to perform an act in meeting the
2 requirements of this Division."

3 Sec. 16. G.S. 105-134.2 reads as rewritten:

4 "**§ 105-134.2. Individual income tax imposed.**

5 (a) A tax is imposed upon the North Carolina taxable income of
6 every individual. The tax shall be levied, collected, and paid
7 annually and shall be computed at the following percentages of
8 the taxpayer's North Carolina taxable income.

9 (1) For married individuals who file a joint return
10 under G.S. 105-152.1 and for surviving spouses, as
11 defined in section 2(a) of the Code:

12 On the North Carolina taxable income up to
13 twenty-one thousand two hundred fifty dollars
14 (\$21,250), six percent (6%); and

15 On the excess over twenty-one thousand two
16 hundred fifty dollars (\$21,250), seven percent
17 (7%).

18 (2) For heads of households, as defined in section 2(b)
19 of the Code:

20 On the North Carolina taxable income up to
21 seventeen thousand dollars (\$17,000), six percent
22 (6%); and

23 On the excess over seventeen thousand dollars
24 (\$17,000), seven percent (7%).

25 (3) For unmarried individuals other than surviving
26 spouses and heads of households:

27 On the North Carolina taxable income up to
28 twelve thousand seven hundred fifty dollars
29 (\$12,750), six percent (6%); and

30 On the excess over twelve thousand seven
31 hundred fifty dollars (\$12,750), seven percent
32 (7%).

33 (4) For married individuals who do not file a joint
34 return under G.S. 105-152.1:

35 On the North Carolina taxable income up to ten
36 thousand six hundred twenty-five dollars (\$10,625),
37 six percent (6%); and

38 On the excess over ten thousand six hundred
39 twenty-five dollars (\$10,625), seven percent (7%).

40 (b) In lieu of the tax imposed by subsection (a) of this
41 section, there is imposed for each taxable year upon the North
42 Carolina taxable income of every individual a tax determined
43 under tables, applicable to the taxable year, which may be
44 prescribed by the Secretary of Revenue. The tables prescribed

1 under this subsection shall be in the form the Secretary deems
2 appropriate, and the amounts of the tax shall be computed on the
3 basis of the rates prescribed by subsection (a) of this section.
4 This subsection does not apply to an individual making a return
5 under section 443(a)(1) of the Code for a period of less than 12
6 months on account of a change in the individual's annual
7 accounting period, or to an estate or trust. The tax imposed by
8 this subsection shall be treated as the tax imposed by subsection
9 (a) of this section."

10 Sec. 17. G.S. 105-151(a)(3) reads as rewritten:

11 "(3) Receipts showing the payment of income taxes to
12 another state or country and a true copy of a
13 return or returns upon the basis of which ~~such~~ the
14 taxes are assessed ~~must~~ shall be filed with the
15 Secretary at, or prior to, the time credit is
16 claimed. If credit is claimed on account of a
17 deficiency assessment, a true copy of the notice
18 assessing or proposing to assess the deficiency, as
19 well as a receipt showing the payment of the
20 deficiency, shall be filed."

21 Sec. 18. G.S. 105-151.8(b) reads as rewritten:

22 "(b) In the case of property owned by the entirety, where both
23 spouses are required to file North Carolina income tax returns,
24 the credit allowed by this section may be claimed only if the
25 spouses file a joint return under G.S. ~~105-152.2~~ [105-152.1].
26 105-151.1. Where only one spouse is required to file a North
27 Carolina income tax return, that spouse may claim the credit
28 allowed by this section."

29 Sec. 19. G.S. 105-154(b) reads as rewritten:

30 "(b) Every partnership doing business in the State required to
31 file a return under the Code shall make a return stating
32 specifically the items of its gross income and the deductions
33 allowed under the Code and the adjustments required by this
34 Division, and shall include in the return the names and addresses
35 of the individuals who would be entitled to share in the net
36 income if distributable, and the amount of the distributive share
37 of each individual, together with the distributive shares of
38 corporation dividends. The return shall be signed by one of the
39 partners under affirmation in the form prescribed in G.S. 105-155
40 of this Division, and the same penalties prescribed in G.S.
41 105-236 shall apply in the event of a willful misstatement. If a
42 business established in this State is owned by a nonresident
43 individual or by a partnership having one or more nonresident
44 members, the manager of the business shall report the earnings of

1 the business in this State and the distributive share of the
2 income of each nonresident owner or partner, and shall pay the
3 tax as levied on individuals under ~~G.S. 105-134.2~~ G.S.
4 105-134.2(a)(3) for each nonresident owner or partner. The
5 business may deduct the payment for each nonresident owner or
6 partner from the owner or partner's distributive share of the
7 profits of the business in this State."

8 Sec. 20. G.S. 105-156 reads as rewritten:

9 **"§ 105-156. Failure to file returns; supplementary returns.**

10 If the Secretary is of the opinion that any taxpayer has failed
11 to file a return or to include in a return filed, either
12 intentionally or through error, taxable income, the Secretary may
13 require from the taxpayer a return or supplementary return, under
14 oath, in such form as the Secretary shall prescribe, of all the
15 items of gross income the taxpayer received during the year for
16 which the return is made, whether or not taxable under the
17 provisions of this Division. If from a supplementary return or
18 otherwise the Secretary finds that any taxable income has been
19 omitted from the original return, ~~of~~ he may require the taxable
20 income so omitted to be disclosed to him under oath of the
21 taxpayer, and to be added to the original return. The
22 supplementary return and the correction of the original return
23 shall not relieve the taxpayer from any of the penalties under
24 G.S. 105-236. The Secretary may proceed under the provisions of
25 G.S. 105-241.1 whether or not he requires a return or a
26 supplementary return under this section."

27 Sec. 21. G.S. 105-160.2 reads as rewritten:

28 **"§ 105-160.2. Imposition of tax.**

29 The tax imposed by this Division shall apply to the taxable
30 income of estates and trusts as determined under the provisions
31 of the Code except as otherwise provided in this Division. The
32 taxable income of an estate or trust shall be the same as taxable
33 income for such an estate or trust under the provisions of the
34 Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7,
35 except that the adjustments provided in G.S. 105-134.6 and G.S.
36 105-134.7 shall be apportioned between the estate or trust and
37 the beneficiaries based on the distributions made during the
38 taxable year. The tax shall be computed at the following
39 percentages of ~~an~~ the amount ~~equal to~~ of the taxable income
40 ~~multiplied by a fraction, the numerator of which is the~~ of an
41 ~~estate or trust's gross income from North Carolina sources, plus~~
42 ~~the gross income from sources outside of the State and from~~
43 ~~intangible sources~~ trust which is for the benefit of a resident
44 of this State, ~~and the denominator of which is the estate or~~

1 ~~trust's gross income as calculated under the Code, or for the~~
2 ~~benefit of a nonresident to the extent that the income (i) is~~
3 ~~derived from North Carolina sources and is attributable to the~~
4 ~~ownership of any interest in real or tangible personal property~~
5 ~~in this State or (ii) is derived from a business, trade,~~
6 ~~profession, or occupation carried on in this State.~~ For purposes
7 of the preceding sentence, taxable income and gross income shall
8 be computed subject to the adjustments provided in G.S. 105-134.6
9 and G.S. 105-134.7. The tax shall be at six percent (6%) on the
10 first twelve thousand seven hundred fifty dollars (\$12,750) of
11 the amount computed above; and at seven percent (7%) of the
12 excess of the amount computed above over twelve thousand seven
13 hundred fifty dollars (\$12,750). The tax computed under the
14 provisions of this Division shall be paid by the fiduciary
15 responsible for administering the estate or trust."

16 Sec. 22. The title of Article 4A of Chapter 105 of the
17 General Statutes reads as rewritten:

18 "ARTICLE 4A.

19 **Withholding of Income Taxes from Wages and**

20 **~~Filing of Declarations of Estimated~~**

21 **Income and Payment of Income**

22 **Tax by Individuals."**

23 Sec. 23. G.S. 105-163.16(c) reads as rewritten:

24 "(c) Where there has been an overpayment (as specified in
25 subsections (a) and (b) of this section) of any tax imposed under
26 Article 4 of this Chapter, as disclosed by the taxpayer's annual
27 return required to be filed by Article 4, the amount of such
28 overpayment shall be refunded to the taxpayer; except that
29 overpayments of less than one dollar (\$1.00) shall be refunded
30 only upon receipt by the Secretary of a written demand for such
31 refund from the taxpayer and except that there shall be no refund
32 to the taxpayer of any sum set-off under the provisions of
33 Chapter 105A, the Set-off Debt Collection Act. Every refund
34 authorized by this section shall be made as expeditiously as
35 possible, and within six months from the date on which the annual
36 return is filed or due to be filed, whichever is later, insofar
37 as the same is practicable; except that no refunds for
38 overpayment of estimated tax shall be made by the Secretary prior
39 to the date on which the final return is filed by the taxpayer.
40 No interest shall be paid with respect to any such refund if the
41 refund is made within the six months' period above referred to.
42 Interest computed at the rate established in G.S. 105-241.1(i)
43 for assessments shall be paid on refunds made after the
44 expiration of said six months' period, such interest to be

1 computed from the time of the expiration of said six months'
2 period until paid. It shall not be necessary for the Attorney
3 General or any member of his' staff to approve such refund. The
4 making of such refund does not absolve any taxpayer of any income
5 tax liability which may in fact exist and the Secretary may make
6 any assessment for any deficiency in the manner provided in
7 ~~Article 4~~ Article 9 of this Chapter. No overpayment of tax by the
8 taxpayer shall be refunded irrespective of whether upon discovery
9 or receipt of written demand if such discovery is not made or
10 such demand is not received within three years from the date set
11 by the statute for the filing of the annual return by the
12 taxpayer or within six months of the payment of the tax alleged
13 to be an overpayment, whichever date is the later."

14 Sec. 24. G.S. 105-188(i) reads as rewritten:

15 "(i) The tax does not apply to tuition payments made on behalf
16 of an individual to an educational institution or to medical
17 payments made on behalf of an individual to a provider of medical
18 care, as defined in ~~G.S. 105-147(11)b1~~, in the Code for the care
19 of that individual. The term 'educational institution' includes
20 only those institutions that normally maintain a regular faculty
21 and curriculum and normally have a regularly organized body of
22 students in attendance where the educational activities are
23 conducted."

24 Sec. 25. G.S. 105-204 reads as rewritten:

25 "**§ 105-204. Beneficial interest in foreign trusts.**

26 The beneficial or equitable interest on December 31 of each
27 year of any resident of this State, or of a nonresident having a
28 business, commercial or taxable situs in this State, in any
29 trust, trust fund or trust account (including custodian accounts)
30 held by a foreign fiduciary, shall be subject to an annual tax,
31 which is hereby levied, of twenty-five cents (25¢) on every one
32 hundred dollars (\$100.00) of the total actual value thereof less,
33 however, the proportion of such value as is equal to the
34 proportion of the beneficiary's income from the trust, trust
35 fund, or trust account (including custodian accounts) that is
36 attributable to (i) interest received by the fiduciary on bonds,
37 notes or other evidences of debt of the United States, State of
38 North Carolina, subdivisions of this State, or agencies of such
39 governmental units and (ii) dividends received by the fiduciary
40 on shares of stock ~~which, or to the extent that the same, are the~~
41 dividends would be deductible by the beneficiary in computing his
42 income tax liability under the provisions of subdivision (7) of
43 G.S. 105-147 without regard to the fifteen-thousand-dollar
44 (\$15,000) limitation under subdivision (7) of G.S. 105-147; a

1 corporate shareholder under G.S. 105-130.7(1), (2), (3), (3a), or
2 (5) except that no deduction shall be allowed for dividends
3 deemed distributable from earnings for a taxable period during
4 which the corporation is an S Corporation subject to the
5 provisions of Division I-S of Article 4 of this Chapter;
6 provided, however, that a resident beneficiary of a foreign trust
7 shall be allowed a credit against any tax due under this section
8 for any foreign intangibles tax paid on his beneficial interest
9 in a foreign trust.

10 The value of the corpus of such trust, trust fund or trust
11 account shall not be considered in computing taxable value
12 hereunder, unless the person subject to the tax:

- 13 (1) Has the right to the present possession of an
14 interest therein, and then only to the extent of
15 the value of such present interest; or
- 16 (2) Has the present right to receive a part or all of
17 the income realized from the corpus of such trust,
18 and then only to the extent of the present value
19 of such income interest; or
- 20 (3) Has created the trust and reserved for himself an
21 income, reversionary or remainder interest therein,
22 and then only to the extent of the present value of
23 such interest."

24 Sec. 26. G.S. 105-212(a) reads as rewritten:

25 "(a) None of the taxes levied in this Article or schedule shall
26 apply to religious, educational, charitable or benevolent
27 organizations not conducted for profit, nor to trusts established
28 for religious, educational, charitable or benevolent purposes
29 where none of the property or the income from the property owned
30 by such trust may inure to the benefit of any individual or any
31 organization conducted for profit, nor to any funds, evidences of
32 debt, or securities held irrevocably in a charitable remainder
33 trust meeting the requirements of section 664 of the Code or in a
34 pooled income fund meeting the requirements of section 642(c)(5)
35 of the Code, nor to any funds held irrevocably in trust
36 exclusively for the maintenance and care of places of burial; nor
37 to any funds, evidences of debt, or securities held irrevocably
38 in pension, profit-sharing, stock bonus, or annuity trusts, or
39 combinations thereof, established by employers for the purpose of
40 distributing both the principal and income thereof exclusively to
41 eligible employees, or the beneficiaries of such employees, if
42 such trusts qualify for exemption from income tax under the
43 ~~provisions of G.S. 105-161(f)(1)a;~~ Code; nor to any funds,
44 evidences of debt or securities held irrevocably in a pension,

1 profit-sharing, stock bonus or annuity plan established by an
2 employer for the benefit of his employees or for himself and his
3 employees if such plan qualifies for exemption from income tax
4 under the provisions of G.S. 105-141(b)(19); section 401 of the
5 Code; nor to any funds, evidences of debt, or securities held in
6 an individual retirement account described in section 408(a) of
7 the Code, or an individual retirement annuity described in
8 section 408(b) of the Code, if such individual retirement account
9 or individual retirement annuity is exempt from income tax under
10 the provisions of G.S. 105-161(f)(1)c or G.S. 105-141(b)(19).
11 section 408(e) of the Code."

12 Sec. 27. G.S. 105-228.5 reads as rewritten:

13 "§ 105-228.5. Taxes measured by gross premiums.

14 Every insurance company and every Articles 65 and 66 of Chapter
15 58 corporation shall pay to the Commissioner of Insurance, at the
16 time and rates provided in this section, a tax measured by gross
17 premiums from business done in this State during the preceding
18 calendar year, or, for Articles 65 and 66 of Chapter 58
19 corporations, a tax measured by gross collections from membership
20 dues, exclusive of receipts from cost plus plans, received by
21 such corporations during the preceding calendar year.

22 Gross premiums from business done in this State in the case of
23 life insurance and annuity contracts, including any supplemental
24 contracts thereto providing for disability benefits, accidental
25 death benefits, or other special benefits, shall for the purposes
26 of the taxes levied in this section mean any and all premiums
27 collected in the calendar year (other than for contracts for
28 reinsurance) for policies the premiums on which are paid by or
29 credited to persons, firms or corporations resident in this
30 State, or in the case of group policies for any contracts of
31 insurance covering persons resident within this State, with no
32 deduction for considerations paid for annuity contracts which are
33 subsequently returned except as below specified, and with no
34 other deduction whatsoever except for premiums returned under one
35 or more of the following conditions: premiums refunded on
36 policies rescinded for fraud or other breach of contract;
37 premiums which were paid in advance on life insurance contracts
38 and subsequently refunded to the insured, premium payer,
39 beneficiary or estate; and in the case of group annuity contracts
40 the premiums returned by reason of a change in the composition of
41 the group covered. Said gross premiums shall be deemed to have
42 been collected for the amounts as provided in the policy
43 contracts for the time in force during the year, whether
44 satisfied by cash payment, notes, loans, automatic premium loans,

1 applied dividend or in any other manner whatsoever, except in the
2 case of premiums waived by any of said companies pursuant to a
3 contract for waiver of premium in case of disability.

4 An insurer, in computing its premium taxes, shall pay premium
5 taxes on a premium for the purchase of annuities at the time the
6 contract holder elects to commence annuity benefits, instead of
7 at the time the premium is collected.

8 Every insurer, in computing the premium tax, shall exclude from
9 the gross amount of premiums all premiums received on or after
10 July 1, 1973, from policies or contracts, issued in connection
11 with the funding of a pension, annuity or profit-sharing plan,
12 qualified or exempt under sections 401, 403, 404, 408, 457 or 501
13 of the Code as defined in ~~G.S. 105-135(15)~~ G.S. 105-134.1(1) and
14 the gross amount of all such premiums shall be exempt from the
15 tax levied by this section.

16 Gross premiums from business done in this State in the case of
17 contracts for fire insurance, casualty insurance, and any other
18 type of insurance except life and annuity contracts as above
19 specified, including contracts of insurance required to be
20 carried by the Workers' Compensation Act, shall for the purposes
21 of the taxes levied in this section mean any and all premiums
22 written during the calendar year, or the equivalent thereof in
23 the case of self-insurers under the Workers' Compensation Act,
24 for contracts covering property or risks in this State, other
25 than for contracts of reinsurance, whether such premiums are
26 designated as premiums, deposits, premium deposits, policy fees,
27 membership fees, or assessments. Gross premiums shall be deemed
28 to have been written for the amounts as provided in the policy
29 contracts, new and renewal, becoming effective during the year
30 irrespective of the time or method of making payment or
31 settlement for such premiums, and with no deduction for dividends
32 whether returned in cash or allowed in payment or reduction of
33 premiums or for additional insurance, and without any other
34 deduction except for return of premiums, deposits, fees or
35 assessments for adjustment of policy rates or for cancellation or
36 surrender of policies.

37 In determining the amount of gross premiums from business in
38 this State all gross premiums received in this State, or credited
39 to policies written or procured in this State, or derived from
40 business written in this State shall be deemed to be for
41 contracts covering persons, property or risks resident or located
42 in this State except for such premiums as are properly reported
43 and properly allocated as being received from business done in
44 some other nation, territory, state or states, and except for

1 premiums from policies written in federal areas for persons in
2 military service who pay premiums by assignment of service pay.
3 The tax rate to be applied to gross premiums collected on
4 contracts applicable to liabilities under the Workers'
5 Compensation Act shall be two and five-tenths percent (2.5%). The
6 tax rate to be applied to gross premiums collected on annuities
7 and all other insurance contracts issued by insurers shall be one
8 and seventy-five hundredths percent (1.75%). The tax rate to be
9 applied to amounts collected on contracts of insurance applicable
10 to fire and lightning coverage (except marine and automobile
11 policies) shall be one and thirty-three hundredths percent
12 (1.33%) in addition to the one and seventy-five hundredths
13 percent (1.75%) tax. Twenty-five percent (25%) of the net proceeds
14 of the one and thirty-three hundredths percent (1.33%) tax on
15 amounts collected on contracts of insurance applicable to fire
16 and lightning coverage shall be deposited in the Rural Volunteer
17 Fire Department Fund established in Articles 84 through 88 of
18 Chapter 58 of the General Statutes. Effective July 1, 1988, the
19 tax rate to be applied to gross premiums and/or gross collections
20 from membership dues, exclusive of receipts from cost plus plans,
21 received by Articles 65 and 66 of Chapter 58 corporations shall
22 be one-half of one percent (1/2 of 1%).

23 The taxes levied herein measured by premiums and/or membership
24 dues shall be in lieu of all other taxes upon insurance companies
25 except: fees and licenses under this Article, or as specified in
26 Articles 1 through 64 of Chapter 58 of the General Statutes of
27 North Carolina as amended; taxes imposed by Articles 84 through
28 88 of Chapter 58 of the General Statutes of North Carolina; taxes
29 imposed by Article 5 of Chapter 105 of the General Statutes of
30 North Carolina as amended; and ad valorem taxes upon real
31 property and personal property owned in this State.

32 For the tax above levied as measured by gross premiums and/or
33 gross collections from membership dues exclusive of receipts from
34 cost plus plans the president, secretary, or other executive
35 officer of each insurance company and Articles 65 and 66 of
36 Chapter 58 corporation doing business in this State shall within
37 the first 15 days of March file with the Commissioner of
38 Insurance a full and accurate report of the total gross premiums
39 as above defined or the total gross collections from membership
40 dues exclusive of receipts from cost plus plans collected in this
41 State during the preceding calendar year. The report shall be in
42 such form and contain such information as the Commissioner of
43 Insurance may specify, and the report shall be verified by the
44 oath of the company official transmitting the same or by some

1 principal officer at the home or head office of the company or
2 association in this country. At the time of making such report
3 the taxes above levied with respect to the gross premiums or the
4 gross collections from membership dues shall be paid to the
5 Commissioner of Insurance. The provisions above shall likewise
6 apply as to reports and taxes for any firm, corporation, or
7 association exchanging reciprocal or interinsurance contracts,
8 and said reports and taxes shall be transmitted by their
9 attorneys-in-fact.

10 Insurance companies and Articles 65 and 66 of Chapter 58
11 corporations subject to the tax imposed by this section with a
12 premium tax liability of ten thousand dollars (\$10,000) or more
13 for business done in North Carolina during the immediately
14 preceding year shall remit three equal quarterly installments
15 with each installment equal to at least twenty-seven and one-half
16 percent (27 1/2%) of the premium tax liability incurred in the
17 immediately preceding taxable year. The quarterly installment
18 payments shall be made on or before April 15, June 15, and
19 October 15 of each taxable year. The company shall remit the
20 balance by the following March 15 in the same manner provided in
21 this section for annual returns. For taxable years beginning on
22 or after January 1, 1989, each of the three quarterly
23 installments shall be equal to at least thirty-three and one-
24 third percent (33 1/3%) and payment of these installments shall
25 be made on or before April 15, June 15, and October 15 of each
26 taxable year. The balance shall be remitted by the following
27 March 15 in the same manner provided in this section for annual
28 returns.

29 The Commissioner of Insurance may, by regulation, permit an
30 insurance company to pay less than the required estimated payment
31 when the insurer reasonably believes that the total estimated
32 payments made for the current year will exceed the total
33 anticipated tax liability for the year.

34 If a company does not meet the installment payment requirement
35 of this section, the Commissioner of Insurance shall assess a
36 penalty on underpayments that is equal to the interest rate
37 adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any
38 overpayment shall be credited to the company and applied against
39 the taxes imposed upon the company under this Article.

40 The provisions as to reports and taxes as measured by gross
41 premiums shall not apply to farmers' mutual assessment fire
42 insurance companies or to fraternal orders or societies that do
43 not operate for a profit and do not issue policies on any person
44 except members.

1 With respect to the taxes levied in this section on the
2 equivalent of premiums of self-insurers under the provisions of
3 the Workers' Compensation Act, the reports required herein shall
4 be transmitted to and the taxes collected by the Insurance
5 Commissioner as provided in G.S. 97-100(j)."

6 Sec. 28. G.S. 105-269.4 reads as rewritten:

7 "§ 105-269.4. Election to apply income tax refund to following
8 year's tax.

9 Any ~~person~~ taxpayer required to file an income tax return
10 under Article 4 of this Subchapter whose return shows that the
11 ~~person~~ taxpayer is entitled to a refund may elect to apply part
12 or all of the refund to that ~~person's~~ taxpayer's estimated income
13 tax liability for the following year. The Secretary of Revenue
14 shall amend the income tax returns to permit the election
15 authorized by this section."

16 Sec. 29. G.S. 105-277.3(a) reads as rewritten:

17 "(a) The following classes of property are hereby designated
18 special classes of property under authority of Article V, Sec.
19 2(2) of the North Carolina Constitution and shall be appraised,
20 assessed and taxed as hereinafter provided:

21 (1) Individually owned agricultural land consisting of
22 one or more tracts, one of which consists of at
23 least 10 acres that are in actual production and
24 that, for the three years preceding January 1 of
25 the year for which the benefit of this section is
26 claimed, have produced an average gross income of
27 at least one thousand dollars (\$1,000). Gross
28 income includes income from the sale of the
29 agricultural products produced from the land and
30 any payments received under a governmental soil
31 conservation or land retirement program. Land in
32 actual production includes land under improvements
33 used in the commercial production or growing of
34 crops, plants, or animals.

35 (2) Individually owned horticultural land consisting of
36 one or more tracts, one of which consists of at
37 least five acres that are in actual production and
38 that, for the three years preceding January 1 of
39 the year for which the benefit of this section is
40 claimed, ~~which~~ have either:

41 a. Been used to produce evergreens intended for
42 use as Christmas trees and met the qualifying
43 or gross income requirements established by
44 the Department of Revenue for the land; or

- 1 b. Produced an average gross income of at least
2 one thousand dollars (\$1,000).
3 Gross income includes income from the sale of the
4 horticultural products produced from the land and
5 any payments received under a governmental soil
6 conservation or land retirement program. Land in
7 actual production includes land under improvements
8 used in the commercial production or growing of
9 fruits or vegetables or nursery or floral products.
- 10 (3) Individually owned forestland consisting of one or
11 more tracts, one of which consists of at least 20
12 acres that are in actual production and are not
13 included in a farm unit."
- 14 Sec. 30. G.S. 20-80.1(a) reads as rewritten:
15 "(a) The Commissioner shall cause to be made a sufficient
16 number of distinctive motor vehicle license plates, in the form
17 hereafter provided, for issuance to eligible members of the
18 reserve components of the armed forces of the United States, upon
19 proper application and under such regulations as he deems
20 appropriate. Upon satisfactory proof of eligibility, the
21 commissioner shall collect a fee in an amount equal to the
22 applicable fee under G.S. 20-87 plus ten dollars (\$10.00). ~~Fees~~
23 ~~collected under~~ The additional fee imposed by this section shall
24 be ~~deposited in~~ credited to the Personalized Registration Plate
25 Fund."
- 26 Sec. 31. G.S. 20-81.3(c) reads as rewritten:
27 "(c) One-half of the revenue derived from the additional fee
28 shall be ~~deposited in~~ credited to the Recreation and Natural
29 Heritage Trust Fund established under G.S. 113-77.7. The
30 remaining one-half of the revenue derived from the additional fee
31 for the special personalized registration plates shall be ~~placed~~
32 in credited to a separate fund designated the 'Personalized
33 Registration Plate Fund'. After deducting the cost of the plates,
34 plus budgetary requirements for advertising, handling, and
35 issuance to be determined by the Commissioner, the revenue in the
36 Personalized Registration Plate Fund shall be transferred
37 quarterly as follows:
- 38 (1) Thirty-three percent (33%) to the account of the
39 Department of Economic and Community Development to
40 aid in financing out-of-state print and other media
41 advertising under the program for the promotion of
42 travel and industrial development in this State.
- 43 (2) Fifty percent (50%) to the Department of
44 Transportation to be used solely for the purpose of

- 1 beautification of highways other than those
2 designated as interstate. These funds shall be
3 administered by the Department of Transportation
4 for beautification purposes not inconsistent with
5 good landscaping and engineering principles.
- 6 (3) Seventeen percent (17%) to the account of the
7 Department of Human Resources to promote travel
8 accessibility for disabled persons in this State.
9 These funds shall be used: to collect and update
10 site information on travel attractions designated
11 by the Department of Economic and Community
12 Development in ~~their~~ its publications; to provide
13 technical assistance to travel ~~attraction~~
14 attractions concerning accommodation of disabled
15 tourists; and to develop, print, and promote the
16 publication ACCESS NORTH CAROLINA. The Department
17 of Human Resources shall make copies of ACCESS
18 NORTH CAROLINA available to the Department of
19 Economic and Community Development for ~~their~~ its
20 use in Welcome Centers and other appropriate
21 Department of Economic and Community Development
22 offices.
- 23 (4) The Department of Economic and Community
24 Development shall promote ACCESS NORTH CAROLINA in
25 ~~their~~ its publications (including providing a toll-
26 free telephone line and an address for requesting
27 copies of the publication) and provide technical
28 assistance to the Department of Human Resources on
29 travel attractions to be included in ACCESS NORTH
30 CAROLINA. The Department of Economic and Community
31 Development shall forward all requests for mailing
32 ACCESS NORTH CAROLINA to the Department of Human
33 Resources.
- 34 (5) Funds allocated by this ~~section~~ subsection for
35 promotion of travel accessibility and ACCESS NORTH
36 CAROLINA which are not spent and are not obligated
37 at the end of the fiscal year shall not revert but
38 shall be transferred to the Department of
39 Administration for removal of man-made barriers to
40 disabled travelers at State-funded travel
41 attractions. Guidelines for the removal of man-
42 made barriers shall be developed in consultation
43 with the Department of Human Resources."
- 44 Sec. 32. G.S. 20-81.5(b) reads as rewritten:

1 "(b) ~~Fees collected under~~ The additional fee imposed by this
2 section shall be ~~deposited in~~ credited to the Personalized
3 Registration Plate Fund."

4 Sec. 33. G.S. 20-81.10(a) reads as rewritten:

5 "(a) The Commissioner shall cause to be made a sufficient
6 number of distinctive motor vehicle license plates for issuance
7 to eligible persons who make application on a form designed by
8 the Division and supply documentation that they were members of
9 the U.S. Military Service and were present at the attack on Pearl
10 Harbor on December 7, 1941. Upon satisfactory proof of
11 eligibility, the Commissioner shall collect a fee in an amount
12 equal to the applicable fee under G.S. 20-87 plus ten dollars
13 (\$10.00). ~~Fees collected under~~ The additional fee imposed by
14 this section shall be ~~deposited in~~ credited to the Personalized
15 Registration Plate Fund."

16 Sec. 34. G.S. 20-81.11(a) reads as rewritten:

17 "(a) The Commissioner shall cause to be made a sufficient
18 number of distinctive motor vehicle license plates for issuance
19 to eligible persons who make application on a form designed by
20 the Division and supply documentation that they were members of
21 the U.S. Military Service and were recipients of the Purple Heart
22 Award. Upon satisfactory proof of eligibility, the Commissioner
23 shall collect a fee in an amount equal to the applicable fee
24 under G.S. 20-87 plus ten dollars (\$10.00). ~~Fees collected under~~
25 The additional fee imposed by this section shall be deposited in
26 credited to the Personalized Registration Plate Fund."

27 Sec. 35. Section 4 of this act shall become effective
28 July 1, 1990. Sections 16 and 21 of this act are effective for
29 taxable years beginning on or after January 1, 1990. Sections 25
30 and 26 of this act are effective retroactively for taxable years
31 beginning on or after January 1, 1989. The remainder of this act
32 is effective upon ratification.

Explanation of Proposal 9

Legislative Proposal 9 makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes.

<u>Section</u>	<u>Explanation</u>
1	Deletes a cross-reference to a statute that was repealed in 1988.
2	Corrects an incorrect cross-reference that was added in 1989.
3	Corrects ungrammatical construction.
4	Effective July 1, 1990, repeals an obsolete, redundant statute providing for licensure of certain emigrant agents. All emigrant agent licenses are now issued under G.S. 105-90, which essentially duplicates 105-90.1. Both the Department of Revenue and the Employment Security Commission confirmed that G.S. 105-90.1 serves no known function.
5	Deletes a cross-reference to a statute that was repealed in 1989 and corrects a cross-reference to a subsection that was renumbered in 1989.
6-7	Clarifies and separates criminal and civil penalties for violation of the Controlled Substance Tax Act and clarifies that interest applies to overdue taxes.
8-9	Clarifies that reporting requirements imposed on law enforcement agencies by the Controlled Substance Tax Act apply only to arrests where drugs seized are subject to tax.
10-11	Deletes language in two franchise tax statutes that relates to provisions repealed as obsolete in 1989.
12	As requested by the Department of Revenue, changes from December 31 to September 30 the cut-off date relating to the return to be used for computing the proportion of dividends deductible for corporate income tax purposes and the stock value not taxable for intangibles tax purposes. The modification is needed by the Department to enable the Intangibles Tax Division to publish annually the booklet, <u>Stock and Bond Values</u> , in a more complete and timely manner.
13	Both the corporate income tax and the individual income tax allow a credit for construction of a fuel ethanol distillery; the 1987 bill rewriting these

Section Explanation

credits was amended at the last minute to extend the sunset date from 1993 to 1994 for the individual income tax credit. Apparently through oversight, the corporate income tax credit sunset was not similarly extended. This section would extend the corporate income tax credit sunset date from 1993 to 1994.

- 14 Updates reference to the former Department of Commerce, now the Department of Economic and Community Development.
- 15 Removes "corporation" from the definition of a person under the Individual Income Tax Act. Requested by the Department of Revenue.
- 16 Effective beginning with the 1990 tax year, this section authorizes the Secretary of Revenue to issue individual income tax tables, similar to tables issued by the Internal Revenue Service and many other states. This section will simplify tax preparation for North Carolina citizens. Requested by the Department of Revenue.
- 17 Makes language changes that were included in a 1989 act but did not take effect due to an error in the coded bill drafting format.
- 18 Corrects an incorrect cross-reference added in 1989.
- 19 Corrects an ambiguous cross-reference, thus clarifying that the tax rates for single individuals apply to nonresident partners of a North Carolina partnership.
- 20 Deletes a stray word that a 1989 act intended to repeal. Due to an error in the coded bill drafting format, the word remained in the statute.
- 21 Corrects the formula for apportioning estate or trust income by providing the appropriate distinction between income that is for the benefit of a resident of this State and income that is for the benefit of a nonresident. Effective beginning with the 1990 tax year.
- 22 Deletes a reference to a repealed law.
- 23 Corrects an erroneous cross-reference to the statutes providing general administration provisions, penalties, and remedies for the Revenue Act.
- 24-27 Amends gift tax, intangibles tax, and gross premiums tax statutes to delete cross-references to repealed statutes and substitute appropriate cross-references to preserve the substance of the law.
- 28 Clarifies that corporations as well as individuals may elect to apply all or part of their income tax refunds to the following year's tax liability.
- 29 Corrects a grammatical error.

<u>Section</u>	<u>Explanation</u>
30-34	Clarifies that while the additional fee for vanity plates is credited to the Personalized Registration Plate Fund, the \$20.00 registration fee charged for all passenger vehicles continues to go to the Highway Fund. Corrects grammar and replaces the phrases "deposited in" and "placed in" with the technically accurate phrase "credited to".
35	Provides that all changes are effective upon ratification except as otherwise provided.

PROPOSAL 9

FISCAL REPORT
FISCAL RESEARCH DIVISION
APRIL 16, 1990

Explanation of Proposal:

Makes numerous technical changes to state revenue laws.

Effective Date:

Varies by provision.

Fiscal Effect:

None.

APPENDIX A

PP
A1-
A2
F+B

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) State Ports--study continued (S.J.R. 96 - Barker, H.B. 133 - Hall), Lease and Renegotiation of Contracts of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company,
- (2) Development of a State Strategy for the Management of Solid Waste (S.J.R. 112 - Speed, S.B. 1214 - Basnight) and Infectious Wastes (H.B. 1045 - Diggs),
- (3) Worker Training Trust Fund (S.B. 271 - Parnell),
- (4) Tourism's Growth and Effect--study continued (S.B. 297 - Block, H.B. 379 - Warren) and Travel/Tourism Reorganization (H.B. 1132 - Perdue),
- (5) Deregulation of Revolving Credit and Authorization of Credit Card Banks (S.B. 377 - Staton) and Linked Deposits (H.B.1910 - Locks),
- (6) Administrative Procedure Act's Rule-Making Process (S.B. 535 - Johnson) and Office of Administrative Hearings and the Administrative Rules Review Commission (S.J.R. 1003 -Martin of Guilford, H.B. 1459 - Michaux),
- (7) "Willie M." Programs (S.J.R. 887 - Block),
- (8) State Procurement Contracts to Minority Business Enterprises (S.B. 927 - Hunt of Durham) and Small Business Technical Assistance Programs (H.J.R. 1514 - Colton),

- (9) Consumer Protection Issues, including those relating to the Elderly (S.B. 1261 - Barker),
- (10) State Marine Patrol (S.B. 1267 - Barker),
- (11) Sports Fishing Licenses (S.B. 1284 - Barker),
- (12) Revenue Laws--study continued, including the impact of 1989 tax law changes (H.J.R. 3 - Lilley) and Local Revenue Sources Options (S.B. 1298 - Odom),
- (13) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes--study continued (H.J.R. 173 - Easterling), Necessity for Certificates of Need, and Continuing Care Issues,
- (14) Health Care/Insurance Costs Issues, including but not limited to, Availability, Benefits, Costs, Portability, Long-Term Care Insurance (H.B. 202 - Wiser), Health Insurance Costs (H.B. 961 - Perdue, S.B. 1068 - Johnson, Joe), Health Insurance (H.J.R. 1159 - Duncan), Infertility Treatment Coverage (H.B. 1187 - Payne), Mammogram/Pap Smear Coverage (H.B. 1014 - Barnes), and Health Care Insurance Coverage (H.B. 1242 - Mills),
- (15) Development of a State Strategy for the Protection of All Groundwater Resources (H.J.R. 554 - DeVane, S.J.R. 367 - Winner),
- (16) Surface Water Quality and Resources Issues, Including Interbasin Transfer, Albemarle-Pamlico Estuarine (H.J.R. 33 - Ethridge, B.), Coastal Water Quality -- study continued (H.J.R. 37 - Ethridge, B.), Haw in Scenic River System (H.B. 1224 - Hackney), Pesticides (H.J.R. 1399 - Holt), Water Resources Planning (H.B. 1945 - Payne), Toxaway River (H.B. 1955 - Colton), and Yadkin River Use and Protection (S.B. 1182 - Kaplan),
- (17) Insanity Verdict (H.B. 1364 - Rhodes), and Guilty but Insane Verdict (H.B. 1372 - Sizemore),
- (18) Agriculture Study (H.B. 1362 - Brown), Agribusiness Plant Variances (H.B. 1304 - Bowman), Fallow Deer (H.J.R. 1924 - James),
- (19) Homeless Persons (H.B. 2018 - Greenwood, S.B. 1290 - Martin of Guilford),
- (20) State Information Processing Needs and Cost -- study continued (S.B. 47 - Royall),
- (21) Sports Fishing Licenses (S.B. 1284 - Barker),
- (22) Proprietary Schools (S.B. 854 - Martin, W.),
- (23) Public Employees' Day Care and Medical and Dental Benefits.

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

Sec. 2.3. State Capital Assets and Improvements (S.B. 1240 - Sherron). The Legislative Research Commission may study the:

- (1) Inventory of State capital assets and the use of those assets,
- (2) Issue of preventive maintenance for State buildings, and
- (3) Need and feasibility of:
 - a. Establishing in the State budget a reserve for repairs and renovations and the administration of such a reserve, and

b. Charging rent to State agencies using State buildings.

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE JOINT RESOLUTION 3

Sponsors: Representatives Lilley; Bowman.

Referred to: Appointments and the Calendar.

January 12, 1989

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF
3 NORTH CAROLINA.

4 Whereas, the Legislative Research Commission has been authorized by
5 the 1977, 1979, 1981, 1983, 1985, and 1987 General Assemblies to conduct a study of
6 the revenue laws of North Carolina; and

7 Whereas, since 1977 the committee appointed by the Legislative Research
8 Commission to study the revenue laws has recommended many changes in the
9 revenue laws in the committee's attempt to improve these laws; and

10 Whereas, the Revenue Laws Study Committee has proved to be an
11 excellent forum for both taxpayers and tax administrators to present their complaints
12 with existing law and make suggestions to improve the law;

13 Now, therefore, be it resolved by the House of Representatives, the Senate
14 concurring:

15 Section 1. The Legislative Research Commission is authorized to study
16 the revenue laws of North Carolina and the administration of these laws. The
17 Commission may review the State's revenue laws to determine which laws need
18 clarification, technical amendment, repeal, or other change to make the laws concise,
19 intelligible, easy to administer, and equitable. When the recommendations of the
20 Commission, if enacted, would result in an increase or decrease in State tax revenues,

1 Sec. 5. The Commission shall submit a final report of its findings and
2 recommendations to the General Assembly on or before the first day of the 1991
3 Session of the General Assembly by filing the report with the Speaker of the House
4 of Representatives and President Pro Tempore of the Senate. The Commission shall
5 terminate upon filing its final report.

6 Sec. 6. The Commission shall have its initial meeting on or before
7 October 15, 1989. The Commission shall meet upon the call of the cochairs.

8 Sec. 7. Upon approval of the Legislative Services Commission, the
9 Legislative Services Officer shall assign professional and clerical staff to assist in the
10 work of the Commission. Clerical staff shall be furnished to the Commission through
11 the offices of House and Senate supervisors of clerks. The expenses of employment
12 of the clerical staff shall be borne by the Commission. The Commission may meet in
13 the Legislative Building or the Legislative Office Building upon the approval of the
14 Legislative Services Commission.

15 Sec. 8. Members of the Commission shall be paid per diem, subsistence,
16 and travel allowances as follows:

- 17 (1) Commission members who are also members of the General
18 Assembly, at the rate established in G.S. 120-3.1;
19 (2) Commission members who are officials or employees of the State
20 or local government agencies, at the rate established in G.S. 138-6;
21 (3) All other Commission members at the rate established in G.S.
22 138-5.

23 Sec. 9. There is appropriated from the General Fund to the General
24 Assembly the sum of \$15,000 for the 1989-90 fiscal year, and the sum of \$10,000 for
25 the 1990-91 fiscal year to fund the Commission created by this act. Funds
26 appropriated for the Commission for the 1989-90 fiscal year but not expended during
27 that fiscal year may be expended for the Commission during the 1990-91 fiscal year.

28 Sec. 10. This act shall become effective July 1, 1989.

APPENDIX B

REVENUE LAWS STUDY COMMITTEE

1989 - 1990

Rep. Daniel T. Lilley, Cochair
P. O. Box 824
Kinston, North Carolina 28501

Sen. Dennis J. Winner, Cochair
81B Central Avenue
Asheville, North Carolina 28801

Rep. J. Vernon Abernethy
P. O. Box 38
Gastonia, North Carolina 28012

Sen. A. D. Guy
P. O. Box 340
Jacksonville, N. C. 28541-0340

Rep. C. Robert Brawley
P. O. Box 1322
Mooreville, N. C. 28115

Sen. Donald R. Kincaid
101 Mulberry St., N.W.
Lenoir, N. C. 28645

Rep. James M. Craven
P. O. Box 44
Pine Bluff, N. C. 28373

Sen. Marshall A. Rauch
6048 S. York Road
Gastonia, N. C. 28053-0609

Rep. John C. Hasty
P. O. Box 945
Maxton, N. C. 28364

Sen. William W. Staton
P. O. Box 1320
Sanford, N. C. 27330

Rep. Betty H. Wisner
P. O. Box 33361
Raleigh, N. C. 27606

Mrs. Margaret Tennille
P. O. Box 5988
Winston-Salem, N. C. 27104

Mr. Earle H. Ward
P. O. Box 670
Shelby, N. C. 28151-0670

The Honorable Oscar Harris
P. O. Box 578
Dunn, N. C. 28335

LRC Member responsible for study: Rep. John W. Hurley

Staff: Martha H. Harris, Legislative Services Office,
Bill Drafting Division

Sabra J. Faires, Legislative Services Office,
Fiscal Research Division

David Crofts, Legislative Services Office
Fiscal Research Division

Ruth Sappie, Legislative Services Office
Fiscal Research Division

Cindy Avrette, Legislative Research Division

Ada B. Edwards, Committee Clerk

APPENDIX C

SPEAKERS AT COMMITTEE MEETINGS

<i>SPEAKER</i>	<i>SUBJECT OF PRESENTATION</i>
John Jarema North Carolina Department of Human Resources	Double taxation of vehicles used by handicapped
Marvin Musselwhite Poyner and Spruill	Option of paying titling tax on October 1 inventory
Lee Paramore National Association of Retired Federal Employees	House Bill 1350
Secretary Helen A. Powers North Carolina Department of Revenue	Amnesty Program
Tom Slade Interstate Auto Leasing	Uniform long-term leasing rate
Robert B. Womble Poyner and Spruill	Sales tax on alternative fuel used to produce electricity
	Taxes payable by the N.C. Enterprise Corporation
Pat Yancey North Carolina Department of Public Instruction	Exemption from titling tax of driver education vehicles
	Exemption from titling tax of public school buses
James A. Young NCNB Leasing Corporation	Uniform long-term leasing rate

APPENDIX D

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611-9184

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE: (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE: (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE: (919) 733-6834



TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: (919) 733-2578

MARGARET WEBB
LEGISLATIVE INFORMATION OFFICER
TELEPHONE: (919) 733-4200

January 26, 1990

MEMORANDUM

TO: Revenue Laws Study Committee

FROM: Sue Floyd^{SP} and Martha H. Harris^{MH}

RE: Bills Recommended to the 1989 Session by the Revenue Laws Study Committee

The following is a summary of the disposition of bills that were recommended by the Revenue Laws Study Committee to the 1989 General Assembly.

Legislative Proposal 1: Enacted.

SB 119, A BILL TO BE ENTITLED AN ACT TO REPEAL THE PRIVILEGE LICENSE TAX FOR FLEA MARKET VENDORS, TO INCREASE THE TAX FOR FLEA MARKET OPERATORS, TO EXEMPT GOVERNMENTAL ENTITIES FROM THE TAX, TO REDEFINE FLEA MARKETS AS 'SPECIALTY MARKETS', AND TO INCREASE THE PENALTY FOR CERTAIN VIOLATIONS, was introduced by Senator Guy and ratified as Chapter 435 of the 1989 Session Laws.

Legislative Proposal 2: Pending.

HB 56, A BILL TO BE ENTITLED AN ACT TO MAKE ADVERTISING AGENCIES LIABLE FOR SALES TAX ON ALL ITEMS PURCHASED BY THEM AND TO EXCLUDE ITEMS PRODUCED BY ADVERTISING AGENCIES FROM SALES TAX, THEREBY ENSURING THAT ADVERTISING SERVICES ARE NOT SUBJECT TO SALES TAX, was introduced by Representative Lilley and remains in the House Finance Committee.

Legislative Proposal 3: Pending.

SB 39 and HB 367, A BILL TO BE ENTITLED AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING STATE SALES AND USE TAXES, were introduced by Senator Guy and Representative Lilley, respectively. HB 367 remains in the House Finance Committee. SB 39 remains in the Senate Finance Committee.

Legislative Proposal 4: Enacted.

SB 50, A BILL TO BE ENTITLED AN ACT TO STRUCTURE INDIVIDUAL INCOME TAX AS A PERCENTAGE OF FEDERAL TAXABLE INCOME, was introduced by Senator Winner and Senator Guy, but not passed in this form. However, SB 51, AN ACT TO ENHANCE THE SIMPLICITY AND FAIRNESS OF THE STATE INCOME TAX SYSTEM, which was substantially similar to SB 50, was enacted as Chapter 728 of the 1989 Session Laws, the Tax Fairness Act of 1989.

Legislative Proposal 5: Enacted.

HB 55, A BILL TO BE ENTITLED AN ACT TO ALLOW A USE TAX CREDIT FOR SALES TAX PAID TO ANOTHER STATE ON CONSTRUCTION EQUIPMENT BROUGHT INTO NORTH CAROLINA, was introduced by Representative Lilley and passed the House. The substance of this bill was incorporated in Chapter 692 of the 1989 Session Laws, the Highway Trust Fund Act.

Legislative Proposal 6: Enacted.

HB 4, A BILL TO BE ENTITLED AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS, was introduced by Representative Lilley and ratified as Chapter 36 of the 1989 Session Laws.

Legislative Proposal 7: Enacted.

HB 5, A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS, was introduced by Representative Lilley and ratified as Chapter 37 of the 1989 Session Laws.

Legislative Proposal 8: Enacted.

HB 58, A BILL TO BE ENTITLED AN ACT TO MAKE CONFORMING CHANGES TO THE MOTOR CARRIER FUEL USE TAX SO THAT A UNIFORM TAX REPORTING FORM MAY BE ADOPTED, was introduced by Representative Lilley and ratified as Chapter 7 of the 1989 Session Laws.

Legislative Proposal 9: Postponed Indefinitely.

HB 57, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE POLITICAL COMMITTEES TO MAKE CERTAIN CONTRIBUTIONS, was introduced by Representative Lilley and postponed indefinitely on April 20, 1989.

Legislative Proposal 10: Enacted.

HB 3, A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF NORTH CAROLINA, was introduced by Representative Lilley but did not pass as a separate resolution. However, the study was continued in SB 231, Chapter 802 of the 1989 Session Laws.

APPENDIX E

March 16, 1990

MEMORANDUM

TO: Myron C. Banks
Deputy Secretary

FROM: Michael S. Hodges, Director
Individual Income Tax Division

SUBJECT: Federal Tax Changes Affecting State Individual Income Tax

The federal income tax changes effective in 1990 which will impact our individual income tax are as follows:

Self-Employment Taxes Deduction

The Social Security Amendments of 1983, P. L. 82-21, added subsection (f) to section 164 of the Internal Revenue Code to allow an individual to deduct one-half of the self-employment taxes imposed under section 1401 of the Internal Revenue Code. This subsection provides that the deduction is to be treated as attributable to the trade or business of the taxpayer which means that it will be allowed as an adjustment to income. Although the provision was enacted in 1983, its effective date was delayed until tax years beginning on or after January 1, 1990.

G. S. 105-134.1(1) defines "Code" as "The Internal Revenue Code as enacted as of January 1, 1989, including any provisions enacted as of that date which became effective either before or after that date, but not including sections 63(c)(4) and 151(d)3." Therefore, the deduction for self-employment taxes allowed under section 164(f) of the Code will be reflected in North Carolina taxable income for the tax year 1990 and the effect on income tax collections may be substantial. We are sending Niki Underwood a copy of this memorandum along with statistical information from the Federation of Tax Administrators so that she may estimate the effect on revenue.

Optional Mileage Allowance

For 1989 the optional mileage allowance is 25½ cents per mile for the first 15,000 miles of business use of an automobile during the year and 11 cents per mile of business use for miles over 15,000.

The Internal Revenue Service has announced that with respect to business travel on or after January 1, 1990, the optional mileage allowance is 26 cents per mile for all miles of business use.

MEMORANDUM

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March 16, 1990

Revenue Reconciliation Act of 1989 (Title VII of the Omnibus Budget Reconciliation Act of 1989)

The Omnibus Budget Reconciliation Act of 1989 was signed by the President on December 19, 1989. If our references to the Internal Revenue Code are updated to January 1, 1990, we will adopt the following changes:

(1) Employer-Paid Educational Assistance

Under federal law prior to the 1989 Act, an employee's gross income did not include employer-paid educational benefits up to \$5,250 annually under a qualified educational assistance program.

This exclusion, which was scheduled to expire for tax years beginning after 1988, has been reinstated and extended to tax years beginning before October 1, 1990, but only for amounts paid before October 1, 1990.

(2) Employer Group Legal Services Plan

Under federal law prior to the 1989 Act, amounts contributed by an employer to a qualified group legal services plan were excludable from the employee's gross income to the extent the employer-paid premiums did not exceed \$70 a year. Also, the value of the legal services provided under the plan were excluded.

This exclusion which was scheduled to expire for tax years ending after 1988 has been reinstated and extended to tax years beginning before October 1, 1990; however, amounts paid by employers for group legal services coverage must be paid before October 1, 1990, to qualify.

(3) "Like Kind" Exchanges with a Related Party

For exchanges of property prior to July 11, 1989, no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged solely for property of "like kind" which is also held for productive use in a trade or business or for investment.

Under the 1989 Act, exchanges of property with a related party after July 10, 1989, are not eligible for nonrecognition of gain treatment if the property is disposed of within two-years of the exchange.

March 16, 1990

(4) Long-term Contracts

Under prior federal law, income from long-term contracts was required to be computed under either the percentage of completion method or the percentage of completion - capitalized cost method. Under the percentage of completion - capitalized cost method, a taxpayer was required to take into account 90 percent of the items under the contract under the percentage of completion method. The remaining 10 percent of the items under the contract were required to be taken into account under the taxpayer's normal method of accounting (e.g., the completed contract method of accounting).

The 1989 Act generally repeals the percentage-of-completion capitalized-cost method of accounting for long-term contracts entered into on or after July 11, 1989.

(5) Self-Employed Health Insurance Premiums

The deduction for 25 percent of health insurance premiums by a self-employed individual who was not a participant in a subsidized health plan maintained by an employer was scheduled to expire for tax years beginning after 1989.

The 1989 Act extends this health insurance premium deduction to tax years beginning before October 1, 1990; however, only those premiums paid for coverage before October 1, 1990, are deductible.

(6) Cellular Telephones-Listed Property

Under the 1989 Act, cellular telephones and similar equipment leased or placed in service after 1989 are treated as "listed property" so that MACRS depreciation will not be allowed on such property unless more than 50 percent of their use is in the taxpayer's trade or business. If such use is 50 percent or less, depreciation must be computed under the straight-line depreciation method over a 10-year period, rather than a 7-year period.

(7) Joint Purchase of Term and Remainder Interest

Under prior federal law, a common method of deferring tax was for two related individuals to purchase jointly a term and remainder interest in property. The owner of the term interest was allowed to reduce income from the term interest by the amortization of the cost of the interest. The owner of the remainder interest would have a gain when the property is sold or exchanged.

MEMORANDUM

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Under the 1989 Act, no amortization is allowed for a term interest in property for any period during which the remainder interest is held by a related person effective for interests acquired or created after July 27, 1989.

(8) Research and Development Expenses

For taxable years beginning before January 1, 1990, individuals may elect to deduct research and development expenses (R & D) currently instead of capitalizing them. A tax credit may also be available with respect to such expenses, and the deductible amount of R & D must be reduced by 50 percent of the amount of tax credit claimed.

Under the 1989 Act, the deductible amount of R & D expenses must be reduced by 100 percent of the amount of the tax credit claimed effective for taxable years beginning on and after January 1, 1990.

MSH/gb

cc: Niki Underwood