LEGISLATIVE

RESEARCH COMMISSION

REVENUE LAWS

REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1992 SESSION

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

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RALEIGH 27611

April 30, 1992

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY (REGULAR SESSION, 1992):

The Legislative Research Commission submits to you for your consideration its interim report on revenue laws. The report was prepared by the Legislative Research Commission's Committee on Revenue Laws pursuant to Section 2.1(1) of Chapter 754 of the 1991 Session Laws.

Respectfully submitted,

Daniel T. Blue, Jr.
Speaker of the House

Henson P. Barnes
President Pro Tempore of the Senate

Cochairs
Legislative Research Commission

1991 - 1992

LEGISLATIVE RESEARCH COMMISSION

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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 cochaired 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 1991 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 Cochairs 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. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the revenue laws was authorized by Section 2.1(1) of Chapter 754 of the 1991 Session Laws. That act states that the Commission may consider House Joint Resolution 7 in determining the nature, scope, and aspects of the study. House Joint Resolution 7, introduced by Representative Daniel T. Lilley in the 1991 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." The relevant portions of Chapter 754 and House Joint Resolution 7 are included in Appendix A.

The Legislative Research Commission grouped this study in its Revenue and Financing area under the direction of Representative Marie W. Colton. The Committee is chaired by Senator Dennis J. Winner and Representative John R. Gamble, Jr. 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 four times before the 1992 Session of the 1991 General Assembly. The Committee focused primarily on problems created by the extensive tax changes enacted by the 1991 General Assembly and proposals from taxpayers and tax officials to improve the administration of the tax laws. In addition, the Committee devoted some of its time to a consideration of basic tax policy and tax structure.

The Committee first reviewed the 1990 Revenue Laws Study Committee's twenty-five recommendations to the 1991 Session. Twenty of these recommendations were enacted in 1991; five were still pending during the interim period. Because the pending proposals were eligible for consideration in the 1992 Session, the Committee decided to postpone further study of the pending proposals until after the 1992 Session. Appendix C lists the 1990 Committee's recommendations and the action taken on them during the 1991 Session.

The Committee studied numerous important tax issues and policies. Legislative staff instructed the Committee on tax changes enacted in 1991, the status of State revenues, and tax proposals considered and recommended by past study committees. Ms. Ruth Sappie of the Fiscal Research Division made a presentation on the history of the sales tax on food and issues and options for change. A copy of her remarks are in Appendix G of this report. The Secretary of Revenue reported to the Committee on the Department of Revenue's ongoing reorganization. The Committee also investigated the status and potential impact of three pending lawsuits against the State concerning taxation of retirement benefits. A representative of the Attorney General's Office reported that the State had won the two State court cases in the State Supreme Court and had won the federal court case through the United States Court of Appeals. The plaintiffs, however, have indicated that they intend to ask the United States Supreme Court to review the decisions.

Several experts addressed the Committee on aspects of tax policy. At the Committee's first meeting, Charles D. Liner of the Institute of Government reviewed principles of taxation and North Carolina's tax structure. Also at that meeting, State Treasurer Harlan Boyles reviewed tax policies in North Carolina, their history, and the need for further examination of the tax structure at this time. Mr. Boyles suggested

that a blue-ribbon study commission, staffed by the Institute of Government, be established to conduct a broad overview of the structure, financing, and functions of government, including a review of the tax structure in light of its purposes, consideration of repealing unjustified tax preferences, and reexamination of the fiscal relationship between State and local governments.

At the Committee's second meeting, State Auditor Ed Renfrow spoke on the importance of fiscal accountability in State government. Mr. Renfrow suggested some measures to increase accountability and also proposed that a tax affordability table, showing the percentages of an individual's gross income paid each year for federal, State, and local taxes, should be developed to help policy makers better understand the affordability of programs that citizens are asked to finance. At the Committee's fourth meeting, John L. Sanders, Director of the Institute of Government, and Charles D. Liner of the Institute of Government presented a paper on North Carolina's fiscal policy. This paper, which is included in Appendix F of this report, states in comprehensive, simple terms the scheme that has evolved over two centuries for financing State and local government in North Carolina. In addition, Appendix G of the report contains an article by Charles D. Liner entitled "Changes in North Carolina's Tax System: The Last Decade." The Committee decided to continue to hear from more experts on broad questions of tax policy and fiscal reform both after the 1992 Session and to include any recommendations on these topics in its final report to the 1993 General Assembly.

As in the past, the Committee proved to be an excellent forum for taxpayers and tax administrators to propose changes in the revenue laws. A number of taxpayers appeared before the Committee to discuss tax problems they felt need to be resolved. The Committee's Legislative Proposals 6 and 10 address two issues raised by taxpayers: the burden of proving whether a wholesaler is liable for sales made under a certificate of resale, and the scope of the scrap tire disposal tax. The Committee also investigated but made no recommendations on the following suggestions presented by taxpayers: additional taxation and regulation of roadside vendors, a tobacco products tax discount for stale products returned by the retailer, and additional reimbursement to local governments for the repeal of the property tax on wholesalers' and retailers' inventories.

Local governments, tax assessors, the Department of Revenue, and William A. Campbell of the Institute of Government asked the Committee to address some technical and administrative issues raised by 1991 legislation changing the method of

collecting property tax on motor vehicles. The Committee's Legislative Proposal 4 contains amendments designed to fine-tune the new legislation, which becomes effective January 1, 1993.

The Committee studied numerous proposals for technical and administrative changes to the revenue laws raised by the Department of Revenue and by legislative staff. The Committee's recommendations to simplify tax compliance for taxpayers and tax administration for the Department of Revenue are contained in Legislative Proposals 2, 12, 13, and 16 of this report. Legislative Proposal 1 is the Committee's annual recommendation that references in State tax statutes to the Internal Revenue Code be updated to include federal amendments made during the past calendar year. Finally, the committee's suggestions for technical, clarifying, and conforming changes to the laws are found in Legislative Proposals 3, 5, 7, 8, 9, 11, 14, and 15 of this report.

A list of speakers who appeared before the Committee and the topics they addressed is provided in Appendix D. The Committee expresses its appreciation for the assistance of Ms. Betsy Y. Justus, Secretary of Revenue, Mr. Myron Banks, Deputy Secretary of Revenue, the staff of the Department of Revenue, and Mr. William A. Campbell of the Institute of Government. The Committee's task is made easier by the informed comments and suggestions of these individuals.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee recommends the following legislation to the 1992 Session of the 1991 General Assembly. The Committee's legislative proposals consist of sixteen bills. The proposals cover a broad range of topics, including refining the new procedure for collecting property taxes on motor vehicles; modifying the scope of the scrap tire tax, the corporate income tax on unrelated business income, and the tax on mobile equipment and mobile vehicles; authorizing the Secretary of Revenue to implement programs to streamline tax filing and tax payment; simplifying and clarifying existing taxes; and making technical amendments to the revenue laws. Each proposal is followed by an explanation and a fiscal note indicating any anticipated revenue gain or loss resulting from the proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

PROPOSAL 1 (91-LCX-281(1.10)Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Update I.R.C. Reference. (Public)

Sponsors: Representatives Gamble; Colton, Jarrell, Justus, Kerr, Lilley, Luebke, Tallent.

Referred to:

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

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

As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. G.S. 105-33.1(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 3. G.S. 105-114(b)(1) reads as rewritten:

"(1) The term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 4. G.S. 105-130.2(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 5. G.S. 105-131(b)(1) reads as rewritten:

"(1) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 6. G.S. 105-134.1(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 7. G.S. 105-163.1(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 8. G.S. 105-163.38 reads as rewritten:

"**§ 105-163.38. Definitions.**

The following definitions apply in this Article, unless the context requires otherwise:

(1) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1990,~~ January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date.

(1a) Corporation. -- Defined in section 7701 of the Code.

(2) Estimated tax. -- The amount of income tax the corporation estimates as the amount imposed by Article 4 for the taxable year.

(3) Fiscal year. -- An accounting period of 12 months ending on the last day of any month other than December.

(4) Secretary. -- The Secretary of Revenue.

(5) Taxable year. -- The calendar year or fiscal year used as a basis to determine net income under Article 4. If no fiscal year has been established, 'fiscal year' means the calendar year. In the case of a return made for a fractional part of the year under Article 4, or under rules prescribed by the

Secretary, 'taxable year' means the period for which the return is made."

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

"(f) As used in this section, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1991,~~ January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 10. G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date and penalties for State taxes owed by certain members of the armed forces or individuals serving in support of the armed forces.**

The Secretary may not assess interest or a penalty against a taxpayer for any period that is disregarded under section 7508 of the ~~Code, as amended by Pub. L. No. 102-2,~~ Code in determining the taxpayer's liability for a federal tax. A taxpayer is granted an extension of time to file a return or take another action concerning a State tax for any period during which the Secretary may not assess interest or a penalty under this section."

Sec. 11. This act is effective for taxable years beginning on or after January 1, 1992.

Explanation of Proposal 1

Legislative Proposal 1 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1991, to January 1, 1992. 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 no changes were made affecting individual income, inheritance, and gift taxes, and that the latest corporate tax law changes in the Code would not have a significant revenue effect for the State's corporation income tax, S corporation income tax, or franchise tax. Two memoranda from the Department of Revenue regarding recent changes in the Internal Revenue Code are Appendix E of this report.

Proposal 1

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

This proposal changes the reference date used for the Internal Revenue Code in all State tax statutes from January 1, 1991 to January 1, 1992.

Effective Date

Taxable years beginning on or after January 1, 1992.

Fiscal Effect

There have been no changes to the Internal Revenue code for individual income, inheritance, and gift taxes during the past year. The Department of Revenue's Corporate Tax Division has reviewed all recent corporate tax law changes to the Internal Revenue Code, and they have determined that there will be no significant impact on state revenues resulting from state conformity to these changes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

PROPOSAL 2 (91-LC-292(1.10)Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Tax Return/Extension Changes. (Public)

Sponsors: Representatives Gamble; Colton, Jarrell, Justus, Kerr, Lilley, Luebke, Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUTES GOVERNING INCOME TAX RETURNS AND TAX FILING EXTENSIONS AND TO AUTHORIZE THE SECRETARY OF REVENUE TO ALLOW PAPERLESS TAX FILING EXTENSIONS AND ELECTRONIC FILING OF INCOME TAX RETURNS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-152 reads as rewritten:

"§ 105-152. ~~Returns.~~ Income tax returns.

(a) Who Must File. -- The following ~~persons~~ individuals shall file with the Secretary an income tax return under ~~affirmation, showing specifically the taxable income and the adjustments required by this Division, and such other facts as the Secretary may require for the purpose of making any computation required by this Division:~~ affirmation:

(1) Every resident required to file an income tax return for the taxable year under the Code and every nonresident who (i) derived gross income from North Carolina sources during the taxable year attributable to the ownership of any interest in real or tangible personal property in this State or derived from a business, trade, profession, or occupation carried on in this State and (ii) is

required to file an income tax return for the taxable year under the Code.

~~(2) Every partnership doing business in this State as provided in G.S. 105-154.~~

(3) Any ~~person~~ individual whom the Secretary believes to be liable for a tax under this Division, when so notified by the Secretary and requested to file a return.

(b) Taxpayer Deceased or Unable to Make Return. -- If the taxpayer is unable to ~~make his own~~ file the income tax return, the return shall be ~~made~~ filed by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the ~~taxpayer. (c)~~ taxpayer. ~~The return of an~~ If an individual who was required to file ~~a~~ an income tax return for the taxable year while living ~~and who~~ has died before making the return, ~~shall be made in his name and behalf by the administrator or executor of the estate~~ the administrator or executor of the estate shall file the return in the decedent's name and behalf, and the tax shall be levied upon and collected from the estate.

(c) Information Required With Return. -- The income tax return shall show the taxable income and adjustments required by this Division and any other information the Secretary requires. The Secretary may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(d) Secretary May Require Additional Information. -- When the Secretary has reason to believe that any taxpayer ~~so~~ conducts a trade or business ~~as either directly or indirectly to distort~~ in a way that directly or indirectly distorts the taxpayer's taxable income or North Carolina taxable ~~income whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control,~~ income, the Secretary may require ~~such facts as he deems necessary~~ any additional information for the proper computation of the taxpayer's taxable income and ~~the~~ North Carolina taxable income. ~~income, and in determining the same the Secretary shall have regard to~~ In computing the taxpayer's taxable income and North Carolina taxable income, the Secretary shall consider the fair profit that would normally arise from the conduct of the trade or business.

(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. ~~A joint return may be filed by a husband and wife as provided in G.S. 105-152.1.~~ Except as otherwise provided in this Division, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Division. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Division reduced by the sum of all credits allowable under this Division including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this Division attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly ~~shall be deemed to~~ have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone.

~~(f) The Secretary may require some or all persons required to file a return under this section to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.~~"

Sec. 2. G.S. 105-154 reads as rewritten:

"**§ 105-154. Information at the ~~source.~~ source returns.**

(a) 'Person' Defined. -- Notwithstanding G.S. 105-134.1, as used in this section, the term 'person' means an individual, a fiduciary, a firm, a partnership, an association, a corporation, a unit of government, or another group acting as a unit.

(b) Information Returns of Payers. -- A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a

foreign corporation is not evidence that the corporation is doing business in this State.

(c) Information Returns of Partnerships. -- A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Division. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation dividends. The information return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155.

(d) Payment of Tax on Behalf of Nonresident Owner or Partner. -- If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State. If the nonresident partner is not an individual and the partner has executed an agreement with the Department that the partner will pay the tax with its corporate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager must shall include a copy of the agreement with the report required by this subsection. ~~Every individual, partnership, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business or having one or more employees, agents, or other representatives in this State, in whatever capacity acting, including lessors or mortgagors of real or personal property, fiduciaries, employers,~~

~~and all officers and employees of the State or of any political subdivision of the State and all officers and employees of the United States or of any political subdivision or agency thereof having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, dividends, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and incomes paid or payable during any year to any taxpayer, shall make complete return thereof to the Secretary under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary. The filing of any report in compliance with the provisions of this section by a foreign corporation shall not constitute an act in evidence of and shall not be deemed to be evidence that the corporation is doing business in this State.~~

~~(b) Every partnership doing business in the State required to file a return under the Code shall make a return stating specifically the items of its gross income and the deductions allowed under the Code and the adjustments required by this Division, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributable, and the amount of the distributive share of each individual, together with the distributive shares of corporation dividends. The return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S. 105-236 shall apply in the event of a willful misstatement. If a business established in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State and the distributive share of the income of each nonresident owner or partner, and shall pay the tax as levied on individuals under G.S. 105-134.2(a)(3) for each nonresident owner or partner. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State.~~"

Sec. 3. G.S. 105-155 reads as rewritten:

"**§ 105-155. Time and place of filing ~~returns.~~ returns; extensions; affirmation.**

(a) Where and When to File. -- ~~Returns shall be in the forms prescribed by the Secretary and~~ An income tax return shall be filed ~~with~~ as prescribed by the Secretary at the ~~Secretary's main office or at any branch office.~~ place prescribed by the

Secretary. The income tax return of every taxpayer reporting on a calendar year basis shall be filed on or before the fifteenth day of April in each year, and the income tax return of every taxpayer reporting on a fiscal year basis shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. An information return shall be filed at the times prescribed by the Secretary. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263.

~~(b) The Secretary may, for good cause, allow further time for filing returns. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due.~~

(c) Affirmation. -- ~~There shall be annexed to the return the affirmation of the taxpayer making the return in the following form:~~ Each taxpayer filing an income tax return and each partnership filing an information return under G.S. 105-154(c) shall furnish the following affirmation: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete." If the return was prepared by a person other than the taxpayer, the preparer's affirmation shall state that it is based on all information of which the preparer has any knowledge.

(d) Forms. -- Returns and affirmations shall be in the form prescribed by the Secretary. ~~The Secretary shall prepare blank forms for the returns, distribute them throughout the State, and furnish them upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of filing a return required by this Division.~~"

Sec. 4. G.S. 105-157(a) reads as rewritten:

"(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary at the office where the return is filed at the time fixed by law for filing the return. ~~An extension of time granted for filing the return under G.S. 105-155 is not an extension of time for payment of the full amount of the tax payable.~~ If the amount shown to be due is less than one dollar ($1.00), no payment need be made."

Sec. 5. G.S. 105-252 reads as rewritten:

"**§ 105-252. Returns required.**

~~Any company, firm, corporation, person, association, copartnership, or public utility receiving~~ A person who receives from the Secretary ~~of Revenue~~ any ~~blanks,~~ form requiring ~~information,~~ information shall fill the form out properly and answer each question fully and correctly. If unable to answer a question, the person shall explain why in writing. ~~cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure.~~ The person shall return the form

~~The answers to such questions shall be verified under oath by such persons, or by the president, secretary, superintendent, general manager, principal accounting officer, partner, or agent, and returned~~ to the Secretary ~~of Revenue at his office within the period fixed by the Secretary of Revenue.~~ at the time and place required by the Secretary. The person shall also furnish an oath or affirmation verifying the return; the oath or affirmation shall be in the form required by the Secretary."

Sec. 6. G.S. 105-254 reads as rewritten:

"**§ 105-254. ~~Blanks furnished by Secretary of Revenue.~~ Secretary to furnish forms.**

The Secretary shall prepare forms suitable for carrying out the duties delegated to the Secretary. Upon request, the Secretary shall provide forms to any person subject to the laws administered by the Secretary. Failure to receive or secure a form does not relieve a person from a duty to file a return or a report.

~~The Secretary of Revenue shall cause to be prepared suitable blanks for carrying out the purposes of the laws which he is required to administer, and, on application, furnish such blanks to each company, firm, corporation, person, association, copartnership, or public utility subject thereto.~~"

Sec. 7. G.S. 105-160.6 reads as rewritten:

"**§ 105-160.6. Time and place of filing returns.**

~~Returns required under the provisions of G.S. 105-160.5~~ An income tax return of an estate or a trust shall be ~~in such form as the Secretary may prescribe,~~ filed as prescribed by the Secretary at the place prescribed by the Secretary. ~~and shall be filed with the Secretary at the Secretary's main office or at any branch office which the Secretary may establish.~~ The return of every fiduciary reporting on a ~~calendar-year~~ calendar year basis shall be filed on or before the 15th day of April in each year, and the return of every fiduciary reporting on a fiscal year basis shall be filed on or before the 15th day of the fourth

month following the close of the fiscal year. A fiduciary may ask the Secretary for an extension of time to file a return under G.S. 105-263. ~~The Secretary may for good cause allow further time for filing a return. A person requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due.~~"

Sec. 8. G.S. 105-160.7(a) reads as rewritten:

"(a) The full amount of the tax payable as shown on the face of the return shall be paid to the Secretary at the office where the return is filed at the time fixed by law for filing the return. However, if the amount shown to be due after all credits is less than one dollar ($1.00), no payment need be made. ~~An extension of time granted for filing the return under G.S. 105-160.6 is not an extension of time for payment of the full amount of the tax payable.~~"

Sec. 9. G.S. 105-163.10 reads as rewritten:

"**§ 105-163.10. Withheld amounts credited to individual for calendar year.**

The amount deducted and withheld under G.S. 105-163.2 during any calendar year from the wages of any individual shall be allowed as a credit to that individual against the tax imposed by G.S. 105-134.2 for taxable years beginning in that calendar year. If more than one taxable year begins in that calendar year the amount shall be allowed as a credit against the tax for the last taxable year so beginning. ~~As a prerequisite to obtaining~~ To obtain the credit allowed in this section, the individual ~~taxpayer~~ must file with the Secretary one ~~copy, and such other copies and information as may be required by regulation,~~ copy of the withholding statement ~~provided for by G.S.105-163.7, and the withholding statement must accompany the annual income tax return required by G.S. 105-152.~~ required by G.S. 105-163.7 and any other information the Secretary requires."

Sec. 10. G.S. 105-197 reads as rewritten:

"**§ 105-197. When return required; due date of return.**

Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) ~~shall~~ must file a gift tax return, under oath or affirmation, with the Secretary of Revenue on a form prescribed by the Secretary. A return is due on or before April 15th following the end of the calendar year. A taxpayer may ask the Secretary of

Revenue for an extension of time for filing a return under G.S. 105-263."

Sec. 11. G.S. 105-263 reads as rewritten:

"**§ 105-263. ~~Time for filing reports extended.~~ Extensions of time for filing a report or return.**

The Secretary may extend the time in which a person must file a report or return with the Secretary. To obtain an extension of time for filing a report or return, a person must comply with any application requirement set by the Secretary. In addition, if the extension is for a franchise tax return, an income tax return, or a gift tax return, the person must pay the amount of tax expected to be due with the return by the original due date of the return; an extension of time for filing one of these returns does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax.

If the extension is for a report or any return other than a franchise tax return, an income tax return, or a gift tax return, the person is not required to pay the amount of tax expected to be due with the report or return by the original due date of the report or return; an extension of time for filing a report or one of these other returns extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a report or return extends the time for paying the tax expected to be due with the report or return, interest, at the rate established pursuant to G.S. 105-241.1(i), accrues on the tax due from the original due date of the report or return to the date the tax is paid.

~~The Secretary of Revenue may, in his discretion, extend to any person, firm, corporation, or public utility a further specified time within which to file any report required by law to be filed with the Secretary of Revenue. An extension of time for filing a report granted under G.S. 105-129, 105-130.17, 105-155, or 105-160.6 is not an extension of time for payment of the full amount of the tax payable or for the attachment of any penalty for failure to pay the tax. Any other extension of time for filing a report is also an extension of time for attachment of any penalty for failure to file a report or to pay any tax or fee. Interest, at the rate established pursuant to G.S. 105-241.1(i), from the time the report or return was originally required to be filed to the time of payment shall be added to and paid with any tax that might be due on returns so extended.~~"

Sec. 12. G.S. 105-152.1 is repealed.

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

"§ 105-228.90. Scope and definitions.

(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection fees levied under Article 3 of Chapter 119 of the General Statutes.

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

(1) Code. -- The Internal Revenue Code as enacted as of January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date.

(2) through (4) Reserved.

(5) Person. -- An individual, a fiduciary, a firm, a partnership, an association, a corporation, a unit of government, or another group acting as a unit.

(6) Secretary. -- The Secretary of Revenue.

(7) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection fee levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms 'tax' and 'additional tax' include penalties and interest as well as the principal amount.

(8) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Sec. 14. G.S. 105-130.19(a) reads as rewritten:

"(a) Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary of Revenue at the office where the return is filed and within the time fixed by law for filing the return. ~~An extension of time granted for filing the return under G.S. 105-130.17(d) is not an extension of time for payment of the full amount of the tax payable.~~ "

Sec. 15. G.S. 105-134.2(a) reads as rewritten:

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

(1) For married individuals who file a joint return under ~~G.S. 105-152.1~~ G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

On the North Carolina taxable income up to twenty-one thousand two hundred fifty dollars ($21,250), six percent (6%).

On the amount over twenty-one thousand two hundred fifty dollars ($21,250) and up to one hundred thousand dollars ($100,000), seven percent (7%).

On the amount over one hundred thousand dollars ($100,000), seven and seventy-five one-hundredths percent (7.75%).

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

On the North Carolina taxable income up to seventeen thousand dollars ($17,000), six percent (6%).

On the amount over seventeen thousand dollars ($17,000) and up to eighty thousand dollars ($80,000), seven percent (7%).

On the amount over eighty thousand dollars ($80,000), seven and seventy-five one-hundredths percent (7.75%).

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

On the North Carolina taxable income up to twelve thousand seven hundred fifty dollars ($12,750), six percent (6%).

On the amount over twelve thousand seven hundred fifty dollars ($12,750) and up to sixty thousand dollars ($60,000), seven percent (7%).

On the amount over sixty thousand dollars ($60,000), seven and seventy-five one-hundredths percent (7.75%).

(4) For married individuals who do not file a joint return under ~~G.S. 105-152.1:~~ G.S. 105-152:

On the North Carolina taxable income up to ten thousand six hundred twenty-five dollars ($10,625), six percent (6%).

On the amount over ten thousand six hundred twenty-five dollars ($10,625) and up to fifty thousand dollars ($50,000), seven percent (7%).

On the amount over fifty thousand dollars ($50,000), seven and seventy-five one-hundredths percent (7.75%)."

Sec. 16. G.S. 105-151.2(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 17. G.S. 105-151.7(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

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

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 19. G.S. 105-151.9(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 20. G.S. 105-151.10(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 21. G.S. 105-151.12(d) reads as rewritten:

"(d) In the case of property owned by a married couple, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1. Where~~ return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 22. G.S. 105-151.13(c) reads as rewritten:

"(c) In the case of conservation tillage equipment owned jointly by a husband and wife, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 23. G.S. 105-266 reads as rewritten:

"**§ 105-266. Overpayment of taxes to be refunded with interest.**

If the Secretary of Revenue discovers from the examination of any return, or otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties, interest and costs if any), that overpayment if the amount of three dollars ($3.00) or more, shall be refunded to the taxpayer within 60 days after it is ascertained together with interest at the rate established in G.S. 105-241.1(i) for assessments; provided, that interest on the refund shall be computed from a date 90 days after the date the tax was originally paid by the taxpayer; except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act. If the overpayment is less than three dollars ($3.00) the overpayment shall be refunded only upon receipt by the Secretary of Revenue of a written demand for the refund from the taxpayer. Provided, however, that no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if the discovery is not made or the demand is not received within three years from the date set by the statute for the filing of the return or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later. ~~The provisions of this paragraph shall~~ This section does not apply to interest required under G.S. 105-267. ~~When~~ This section applies to a refund payable to a husband and wife who ~~have elected under G.S. 105-152.1 to file~~ filed a joint return. ~~return and a refund for overpayment of tax is made payable to both~~

~~spouses as provided in that subsection, the provisions of this section shall apply to the refund.~~"

Sec. 24. This act is effective upon ratification.

Explanation of Proposal 2

Legislative Proposal 2 would allow the Secretary of Revenue to provide taxpayers the opportunity to file their individual income tax returns electronically and to obtain paperless tax filing extensions. The proposal removes barriers in the current law that would otherwise prohibit the Secretary from implementing these programs, but it does not require the Secretary to implement the programs. Legislative Proposal 2 also clarifies the language of the current statutes governing income tax returns and tax filing extensions.

Under current law, a taxpayer who files an individual income tax return must "annex" to the return an affirmation that the return is correct. In addition, the taxpayer's withholding statement must accompany the return. Legislative Proposal 2 amends these requirements to provide that the affirmation and withholding statement must be furnished to the Secretary of Revenue but need not accompany or be attached to the individual income tax return. This change would allow the Secretary to permit taxpayers to file individual income tax returns electronically. The Department would adopt rules providing that taxpayers who file their returns electronically must file a separate signature card containing the affirmation and must include with the signature card a copy of the withholding statement.

Under current law, a taxpayer who wants an extension for filing an individual income tax return must file an application requesting the extension and must pay the full amount of the tax due. The Internal Revenue Service is considering implementing a new procedure to simplify the extension process for federal income taxes. If implemented, the federal program would remove the requirement that a taxpayer file an application for an extension. Instead, if the taxpayer has paid the full amount of the federal tax due by the original due date of the return, the taxpayer is automatically allowed to file the return late without penalty. Legislative Proposal 2 would enable the Secretary of Revenue to implement the same program for State taxes, by deleting the provisions in the current law that specifically require a taxpayer to submit an application for an extension of time for filing. Instead, the law would require a taxpayer to "comply with any application requirement set by the Secretary." Legislative Proposal 2 retains the rule that a filing extension is not an extension of time for paying the full amount of income tax due.

Legislative Proposal 2 also makes numerous clarifying changes to the statutes governing income tax returns, information returns, and tax filing extensions. The Revenue Act has one Article, Article 9, that provides the administrative rules applicable to all taxes collected by the Secretary of Revenue. Many of the other Articles applicable to specific taxes contain language that duplicates the administrative provisions of Article 9; Legislative Proposal 2 eliminates some of this unnecessary duplication.

Section 1 rewrites the statute governing income tax returns to clarify who must file, what information the taxpayer may be required to furnish, and when a couple must file a joint return. Section 2 clarifies the law regarding information returns that must be filed by employers and other payers of income and by partnerships. Section 3 clarifies the time and place of filing income tax returns and information returns and deletes the specific requirements that an affirmation be attached to the income tax return and that an application for a filing extension be submitted, as discussed above. Section 4 eliminates redundant language in the income tax law regarding filing extensions; the applicable provisions regarding filing extensions are contained in G.S. 105-263, set out in Section 11 of the bill.

Sections 5 and 6 of Legislative Proposal 2 clarify the statutes requiring taxpayers to make returns and requiring the Secretary of Revenue to provide tax filing forms. Sections 7 and 8 revise estate and trust income tax provisions to clarify where returns are to be filed and to delete redundant language regarding tax filing extensions. The applicable provisions regarding filing extensions are contained in G.S. 105-263, set out in Section 11 of the bill. Section 9 provides that a withholding statement need not physically accompany the income tax return, as discussed above. Section 10 clarifies that the rules governing gift tax filing extensions are included in G.S. 105-263 of Article 9, which provides filing extension rules for all taxes collected by the Secretary of Revenue.

Section 11 of Legislative Proposal 2 revises the language of the statute governing tax filing extensions for all types of taxes collected by the Secretary of Revenue. As rewritten, the statute makes it clear that an extension of time for filing a franchise tax return, an income tax return, or a gift tax return is not an extension of time for paying the tax. The rewrite also removes the specific requirement that an application be submitted and provides instead that the taxpayer must "comply with any application requirement set by the Secretary," as mentioned above.

Section 12 repeals a statute relating to joint income tax returns; the provisions of this statute are added to the statute regarding individual income tax returns by Section 1

of Legislative Proposal 2. Sections 15 through 23 repeal cross references to the repealed statute.

Section 13 of Legislative Proposal 2 adds a new section to Article 9, the administrative Article of the Revenue Act. This section clarifies that the provisions of Article 9 apply to all taxes collected by the Secretary of Revenue as well as motor fuel and kerosene inspection fees collected by the Secretary of Revenue. The new section also provides definitions for common terms used throughout Article 9 of the Revenue Act. Section 14 removes redundant language in the corporate income tax statutes regarding tax filing extensions; the applicable provisions regarding filing extensions are contained in G.S. 105-263, set out in Section 11 above.

Section 24 provides that Legislative Proposal 2 is effective upon ratification. The legislation removes barriers in the current law that would otherwise prevent the Secretary of Revenue from instituting an electronic filing option and paperless extensions; it does not, however, require the Secretary to implement either of these programs.

Proposal 2

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

The main purpose of this proposal is to remove barriers in the current law that currently are obstacles to the Secretary of Revenue's proposed implementation of an electronic individual income tax filing system and taxpayer procurement of paperless tax filing extensions. Other provisions in this proposal clarify the language of the current statutes that affect income tax returns and tax filing extensions.

Effective Date

Upon ratification.

Fiscal Effect

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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PROPOSAL 3 (91-LCX-295(1.10)Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Unrelated Business Income Tax. (Public)

Sponsors: Representatives Gamble; Colton, Jarrell, Justus, Kerr, Lilley, Luebke, Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CHANGES TO THE CORPORATE INCOME TAX ON UNRELATED BUSINESS INCOME OF EXEMPT CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.11 reads as rewritten:

"**§ 105-130.11. Conditional and other exemptions.**

(a) Exempt Organizations. -- Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Division.

(1) Fraternal beneficiary societies, orders or associations

a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their ~~dependents;~~ dependents.

(2) ~~Every building~~ Building and loan associations ~~[association],~~ and savings and loan associations subject to tax under Article 8D of this Chapter; ~~and any~~ cooperative banks without capital stock

organized and operated for mutual purposes and without ~~profit,~~ profit; and electric and telephone membership corporations organized under Chapter 117 of the General ~~Statutes;~~ Statutes.

(3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or ~~individual;~~ individual.

(4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or ~~individual;~~ individual.

(5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social ~~welfare;~~ welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or ~~member;~~ member.

(7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, ~~dues~~ dues, and fees collected from members for the sole purpose of meeting ~~expenses;~~ expenses.

(8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by ~~them;~~ them.

(9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158.

Nothing in this subdivision shall be construed to exempt any cooperative, mutual ~~association~~ association, or other organization from an income tax on net income ~~which~~ that has not been refunded

to patrons on a patronage basis and distributed either in cash, stock, or certificates, or in some other manner that discloses ~~to each patron~~ the amount of ~~his patronage~~ each patron's refund. Provided, in arriving at net income for purposes of this subdivision, no deduction shall be allowed for dividends paid on capital stock. Patronage refunds made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of ~~such~~ the taxable year ~~shall be~~ are considered as to be made on the last day of ~~such~~ the taxable year to the extent the allocations are attributable to income derived before the close of ~~such~~ the year; provided, that no stabilization or marketing organization ~~which~~ that handles agricultural products for sale for producers on a pool basis ~~shall be deemed~~ is considered to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool ~~shall~~ have been sold and the pool ~~shall have~~ has been closed; provided, further, that a pool ~~shall not be deemed~~ is not considered closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. ~~Such~~ These cooperatives and other organizations shall file an annual information return with the Secretary ~~of Revenue~~ on forms to be furnished by the Secretary and shall include ~~therein~~ the names and addresses of all persons, ~~patrons and/or shareholders,~~ patrons, or shareholders whose patronage refunds amount to ten dollars ($10.00) or ~~more; and~~ more.

(10) Insurance companies paying the tax on gross premiums as specified in G.S. 105-228.5.

(11) Corporations or organizations, such as condominium associations, homeowner associations, or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing ~~development~~ development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, ~~maintenance~~ maintenance, or landscaping of the common areas and facilities owned by ~~such~~ the corporation or organization or

its members situated contiguous to ~~such~~ the houses, ~~apartments~~ apartments, or other dwellings or for the management, operation, preservation, ~~maintenance~~ maintenance, and repair of ~~such~~ the houses, ~~apartments~~ apartments, or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of ~~such~~ the corporation or organization inures (other than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person.

(b) Unrelated Business Income. -- Except as provided in this subsection, an organization described in subdivision (a)(1), ~~Organizations described in subdivision (1),~~ (3), (4), (5), (6), (7), ~~(8)~~ (8), or (9) ~~of subsection (a)~~ of this section and any organization exempt from federal income tax under the Code is subject to the tax provided in G.S. 105-130.3 on its unrelated business taxable income, as defined in section 512 of the Code, adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net income derived from any of the following:

(1) Research performed by a college, university, or hospital.

(2) Research performed for the United States or its instrumentality or for a state or its political subdivision.

(3) Research performed by an organization operated primarily to carry on fundamental research, the results of which are freely available to the general public.

~~shall be subject to the tax provided for in G.S. 105-130.3 to the following extent:~~

~~Gross income derived by any organization from any trade or business the conduct of which is not substantially related (aside from the need of the organization for income) to the exercise or performance of those functions constituting the basis for its exemption in subsection (a) of this section, less all deductions allowed by this Division directly connected with carrying on such trade or business and less one thousand dollars ($1,000); provided, this paragraph does not apply to interest, royalties, dividends or rents unless this income is determined to be "unrelated business taxable income" under the Code; provided further, this paragraph shall not apply to any trade or business (i) in which substantially all the work in carrying on such trade or business is performed for the organization without~~

~~compensation; or (ii) which is the selling of merchandise, substantially all of which is given to it; (iii) which is carried on by an organization described in G.S. 105-130.11(a)(3) primarily for the convenience of its members, students, patients or employees. Provided further, this paragraph shall not apply to net income derived from research (i) performed by a college, university or hospital; or (ii) performed for the United States, its instrumentalities or any state or political subdivision thereof; or (iii) performed by an organization operated primarily for the purpose of carrying on fundamental research, the results of which are freely available to the general public.~~

(c) Homeowner Association Income. -- An organization ~~Organizations~~ described in subdivision ~~(11) of subsection (a)~~ (a)(11) of this section ~~shall be~~ is subject to the tax provided ~~for~~ in G.S. 105-130.3 on its ~~unrelated business income. For purposes of this subsection the term "unrelated business income" means gross income (excluding any membership income)~~ gross income other than membership income less the deductions allowed by this Article ~~which~~ that are directly connected with the production of ~~such unrelated business income.~~ the gross income other than membership income. The term 'membership income' means the gross income from assessments, fees, charges, or similar amounts received from members of the organization for expenditure in the preservation, maintenance, and management of the common areas and facilities of or the residential units in the condominium or housing development."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1992.

Explanation of Proposal 3

Legislative Proposal 3 makes conforming changes to the statute governing corporate income tax on unrelated business income of exempt corporations. G.S. 105-130.11(a) provides that certain corporations are exempt from income tax; G.S. 105-130.11(b) and (c) provide that exempt corporations must pay tax on unrelated business income. When the General Assembly restructured the Corporation Income Tax Act in 1967 to use federal taxable income as a starting point for calculating State taxable income, it retained a separate statute specifically designating which corporations are exempt from tax rather than adopting the exemptions provided in section 501 of the Code. The State statute, G.S. 105-130.11(a), sets out categories of exempt corporations that are very similar to those of the Code but, because of differences between the State and federal statutory language, there was some question whether adopting the federal language might eliminate exemptions then being enjoyed by some corporations. In 1983, the statute was brought more closely into conformity with the Code, to provide that if a corporation is exempt from federal income tax it is also exempt from State income tax. The separate State exemption categories were retained, however, because of continuing questions regarding whether the State exemptions are broader than the federal exemptions.

Under both State and federal law, exempt corporations are required to pay income tax on "unrelated business income." Unrelated business income is, with certain exceptions, income from a trade or business the conduct of which is not substantially related to the exercise by the exempt corporation of its charitable, educational, or other function that is the basis for its exemption from income tax. See sections 512 and 513 of the Code. When G.S. 105-130.11(a) was amended in 1983 to provide that corporations exempt from federal income tax are also exempt from State income tax, a conforming amendment was not made to expand the scope of G.S. 105-130.11(b) to the same extent. Legislative Proposal 3 makes this conforming change. Legislative Proposal 3 also eliminates all but one of the exceptions to the definition of unrelated business income that were formerly set out in the State law, because they are identical to the federal exceptions that State law has already adopted by reference. The remaining exception, for three types of research, is very similar to the exceptions provided in section 512(b)(7), (8), and (9) of the Code but, because there is some question whether the wording of the State exception might lend itself to a broader

interpretation than that given to the Code, the separate State exception is retained in Legislative Proposal 3.

The remaining provisions of Legislative Proposal 3 add captions to the subsections of G.S. 105-130.11, correct grammatical and style errors in G.S. 105-130.11(a), and clarify the wording of G.S. 105-130.11(c). Section 2 of the bill provides that it becomes effective beginning with the 1992 tax year.

Proposal 3

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

This proposal changes certain state statutes governing corporate income taxation of the unrelated business income of exempt corporations so that they more closely conform to the Internal Revenue Code. The conforming changes include:

1. A clarification that all exempt corporations with unrelated business income taxed at the Federal level will also be taxed on that income at the State level.
2. The elimination of redundant language in the State law regarding exceptions to the definition of unrelated business income because it is identical to the Internal Revenue Code the State has already adopted by reference.

One exception to the Internal Revenue Code's definition of unrelated business income has been retained at the State level. This exception concerns net income derived from three types of research:

1. Research performed by a college, university, or hospital.
2. Research performed for the United States or its instrumentality or for a state or its political subdivision.
3. Research performed by an organization operated primarily to carry on fundamental research, the results of which are freely available to the general public.

Background Information

Examples of organizations exempt from corporate income tax include:

1. Religious, charitable, and educational organizations
2. Civic leagues
3. Labor, agricultural, and horticultural organizations
4. Business leagues, chambers of commerce, and real estate boards
5. Social clubs
6. Corporations holding title to property for and paying income to exempt organizations
7. Corporations that are instrumentalities of the United States

Unrelated business income is income not related to the purpose of the exempt organization, and the tax is levied because the organization is engaging in substantial commercial activities. Absent such a tax, nonexempt organizations (taxable businesses) would be at a competitive disadvantage compared to exempt non-profit corporations.

For example, suppose a museum is an exempt organization. As part of the exempt purpose of the museum, educational lectures are given in the museum's theater during operating hours. In the evening, when the museum is closed, the theater is leased to an individual who operates a movie theater. The lease income received from the movie theater activities is unrelated business income.

Effective Date

Taxable years beginning on or after January 1, 1992

Fiscal Effect: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1992

H D

PROPOSAL 4 (91-LCX-283(1.10)Z)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Car Property Tax Technical Changes. (Public)

Sponsors: Representatives Kerr; Colton, Gamble, Jarrell, Justus, Lilley, Luebke, Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES RELATING TO PROPERTY TAXES ON MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-333 reads as rewritten:

"**§ 105-333. Definitions.**

When used in this Article unless the context requires a different meaning:

(1) 'Airline company' means a public service company engaged in the business of transporting passengers and property by aircraft for hire within, into, or from this State.

(2) 'Bus line company' means a public service company engaged in the business of transporting passengers and property by motor vehicle for hire over the public highways of this State (but not including a bus line company operating primarily upon the public streets within a single local taxing unit), whether the transportation be within, into, or from this State.

(3) 'Distributable system property' means all real property and tangible and intangible personal property owned or used by a railroad company other than nondistributable system property.

(4) 'Electric membership corporation' means a public service company which is organized, reorganized, or domesticated under the provisions of Chapter 117 of the General Statutes and which is engaged in the business of supplying electricity for light, heat, or power to consumers in this State.

(5) 'Electric power company' means a public service company engaged in the business of supplying electricity for light, heat, or power to consumers in this State.

(6) Repealed by Session Laws 1973, c. 783, s. 5, effective January 1, 1974.

(7) 'Flight equipment' means aircraft fully equipped for flying and used in any operation within this State.

(8) 'Gas company' means a public service company engaged in the business of supplying artificial or natural gas to, from, within, or through this State through pipe or tubing for light, heat, or power to consumers in this State.

(9) 'Locally assigned rolling stock' means ~~motor vehicles (other than passenger cars and service vehicles) which are~~ rolling stock that is owned or leased by a motor freight carrier ~~company and~~ company, specifically assigned to a terminal or other ~~premises~~ premises, and is regularly used at the premises to which ~~assigned for the pickup and delivery of local freight.~~ assigned.

(10) 'Motor freight ~~carrier' company~~ carrier company' means a public service company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State as herein provided:

a. As to interstate carrier companies domiciled in North Carolina, this definition shall include carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State or two or more terminals inside this State. For purposes of appraisal and allocation only, the definition shall also include a North Carolina interstate carrier which does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad

valorem taxes on a portion of the value of the rolling stock of such carrier to taxing units in one or more other states.

b. As to interstate carrier companies domiciled outside this State, this definition shall include carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.

c. As to intrastate carrier companies, this definition shall include only those carriers which are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State.

(11) 'Nondistributable system property' means the following properties owned by a railroad company: Land other than right-of-way, depots, machine shops, warehouses, office buildings, other structures, and the contents of the structures listed in this subdivision.

(12) 'Nonsystem property' means the real and tangible personal property owned by a public service company but not used in its public service activities.

(13) 'Pipeline company' means a public service company engaged in the business of transporting natural gas, petroleum products, or other products through pipelines to, from, within, or through this State, or having control of pipelines for such a purpose.

(14) 'Public service company' means railroad company, pipeline company, gas company, electric power company, electric membership corporation, telephone company, telegraph company, bus line company, motor freight carrier company, airline company, and any other company performing a public service that is regulated by the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission except a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. (For purposes of appraisal under this Article, this definition shall include

a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the agencies named in the preceding sentence.)

(15) 'Railroad company' means a public service company engaged in the business of operating a railroad to, from, within or through this State on rights-of-way owned or leased by the company. It also means a company operating a passenger service on the lines of any railroad located wholly or partly in this State.

(16) 'Rolling stock' means ~~buses, trucks, tractor trucks, trailers, semitrailers, combinations thereof, and other motor vehicles (except passenger cars and service vehicles), and railroad locomotives and cars, which~~ motor vehicles, railroad locomotives, and railroad cars that are propelled by mechanical or electrical power and used upon the highways or, in the case of ~~railroads,~~ railroad vehicles, upon tracks.

(17) 'System property' means the real property and tangible and intangible personal property used by a public service company in its public service activities. It also means public service company property under construction on the day as of which property is assessed which when completed will be used by the owner in its public service activities.

(18) 'Telegraph company' means a public service company engaged in the business of transmitting telegraph messages to, from, within, or through the State.

(19) 'Telephone company' means a public service company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State.

(20) Repealed by Session Laws 1973, c. 783, s. 5, effective January 1, 1974."

Sec. 2. G.S. 105-329 is repealed.

Sec. 3. G.S. 105-330.1 reads as rewritten:

"**§ 105-330.1. (Effective January 1, 1993) Classification of motor vehicles.**

All motor vehicles, except (i) motor vehicles exempt from registration pursuant to G.S. 20-51, (ii) manufactured ~~homes and (ii)~~ homes, mobile classrooms, and mobile offices, and (iii) motor vehicles owned or leased by a public service company ~~or~~

~~leased by a public service company and included in the company's system property under G.S. 105-335(b)(1),~~ and appraised under G.S. 105-335, are hereby designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Classified motor vehicles shall be listed and assessed as provided in this Article and taxes on classified motor vehicles shall be collected as provided in this Article."

Sec. 4. G.S. 105-330.2 reads as rewritten:

"**§ 105-330.2. (Effective January 1, 1993) Appraisal, ownership, and situs.**

(a) The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) ~~that is registered~~ shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration is renewed. If the value of a new motor vehicle cannot be determined as of January 1 preceding the date the new registration is applied for, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State. The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which the current vehicle registration is renewed or the day on which a new registration is applied for. ~~first day of the month in which the new registration is applied for.~~

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) ~~that is unregistered~~ shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). ~~The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which the current vehicle registration is renewed or the day on which a new registration is applied for.~~ The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the ~~appraisal,~~ appraised value, situs, or taxability of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property. The owner of a classified motor vehicle must file an appeal with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the

listing, valuation, or assessment of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this ~~Article, and this information shall appear on the forms beginning January 1, 1993.~~ Article."

Sec. 5. G.S. 105-330.4 reads as rewritten:

"**§ 105-330.4. (Effective January 1, 1993) Due date, interest, and enforcement remedies.**

(a) ~~Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be due each year on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.~~ Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be due on September 1 following the date by which the vehicle was required to be listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be due each year on the following dates:

(1) For a vehicle registered under the staggered system, taxes shall be due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.

(2) For a vehicle registered under the annual system, taxes shall be due on May 1 following the date the registration expired or following the December in which a new registration was obtained.

(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of three-fourths of one percent (3/4%) per month beginning the first month following the date the taxes were due until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c).

(c) Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the provisions of G.S. 105-355, taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) do not become a lien on real property owned by the taxpayer."

Sec. 6. G.S. 105-330.5 reads as rewritten:

"**§ 105-330.5. (Effective January 1, 1993) Listing and collecting procedures.**

(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the assessor shall prepare a tax notice for each vehicle; the tax notice shall contain all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration expired or the new registration was applied for. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The tax notice shall contain:

(1) The date of the tax notice.

(2) The appraised value of the motor vehicle.

(3) The tax rate of the taxing units.

(4) A statement that the appraised value, situs, and taxability of the motor vehicle may be appealed to the assessor within 30 days after the date of the notice.

(b) ~~For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the various taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date.~~ When the tax notice required by subsection (a) is prepared, the county tax collector shall mail a copy of the notice, with appropriate

instructions for payment, to the motor vehicle owner. The county may retain the actual cost of collecting municipal and special district taxes collected pursuant to this section, not to exceed one and one-half percent (1 1/2%) of the amount of taxes collected. The county finance officer shall establish procedures to ensure that tax payments received pursuant to this section are properly accounted for and taxes due other taxing units are remitted to the units to which they are due no later than 30 days after the date of collection.

(c) ~~When the tax notice is prepared, the county tax collector shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The county may retain the actual cost of collecting municipal and special district taxes collected pursuant to this section, not to exceed one and one-half percent (1 1/2%) of the amount of taxes collected. The county finance officer shall establish procedures to ensure that tax payments received pursuant to this section are properly accounted for and taxes due other taxing units are remitted to the units to which they are due no later than 30 days after the date of collection.~~ For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities shall list, assess, and tax classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) as provided in G.S. 105-326, 105-327, and 105-328 and shall send tax notices as provided in this section.

(d) The county shall include taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) in the tax levy for the fiscal year in which the taxes become due and shall charge the taxes to the tax collector for that year."

Sec. 7. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the motor vehicle to a new owner and surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year, the owner may apply for a release or refund of taxes on the vehicle for the full calendar months remaining after surrender. To apply for a release or refund, the owner

must present to the county tax collector within 60 days after surrendering the plates the ~~certificate~~ receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax ~~receipt~~ notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

Sec. 8. G.S. 105-330.7 reads as rewritten:

"**§ 105-330.7. (Effective January 1, 1993) List of delinquents sent to Division of Motor Vehicles.**

On the tenth day of each month the county tax collector shall prepare a list with the name and address of the owner and the vehicle identification number of every classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) on which taxes remain unpaid on that date and on which taxes became due on the first day of the fourth month preceding that date. The tax collector shall mail that list to the Division of Motor Vehicles. The list shall be in ~~such~~ the form and contain ~~such~~ the information ~~as~~ required by the Division of Motor ~~Vehicles may require.~~ Vehicles."

Sec. 9. Article 21 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-325.1. Special committee for motor vehicle appeals.**

The board of county commissioners may appoint a special committee of its members or other persons to hear and decide appeals arising under G.S. 105-330.2(b). The county shall bear the expense of employing the committee."

Sec. 10. G.S. 105-373(h) reads as rewritten:

"(h) **(Effective January 1, 1993)** Relief from Collecting Taxes on Classified Motor Vehicles. The board of county commissioners may, in its discretion, relieve the tax collector of the charge of taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) that are one year or more past due when it appears to the board that the taxes are uncollectible. This

relief, when granted, shall include municipal and special district taxes charged to the collector."

Sec. 11. G.S. 20-50.3 reads as rewritten:

"**§ 20-50.3. (Effective January 1, 1993) Division to furnish county assessors registration lists.**

On the tenth day of each month the Division shall send to each county assessor a list of vehicles registered under the staggered system for which registration was renewed or a new registration was obtained in that county during the second month preceding that date, with the name and address of each vehicle owner. On the tenth day of March the Division shall send to each county assessor a list of the following vehicles registered under the annual system with the name and address of each vehicle owner:

(1) Vehicles for which registration was renewed in that county during the period beginning the preceding December 1.

(2) Vehicles for which a new registration was obtained in that county during the preceding December."

Sec. 12. Section 10 of Chapter 624 of the 1991 Session Laws reads as rewritten:

"Sec. 10. This act becomes effective January 1, ~~1993. This act~~ 1993, and shall first apply to the taxation of classified motor vehicles for the fiscal year beginning July 1, ~~1993, and to that end it shall apply to~~ 1993. For classified motor vehicles registered under the staggered system, this act shall first apply to vehicles newly registered in March ~~1993, and classified motor vehicles~~ 1993 and vehicles whose registration expires in March 1993. For classified motor vehicles registered under the annual system, this act shall first apply to vehicles newly registered during December 1992 and vehicles whose registration was renewed on or after December 1, 1992. Notwithstanding the provisions of G.S. 105-330.4, for the fiscal year beginning July 1, 1993, taxes on classified motor vehicles registered under the annual system are due July 1, 1993, and interest on these unpaid taxes begins to accrue August 1, 1993."

Sec. 13. This act becomes effective January 1, 1993.

Explanation of Proposal 4

Chapter 624 of the 1991 Session Laws, AN ACT TO PROVIDE FOR A MORE EFFICIENT AND EQUITABLE PROCEDURE FOR ASSESSING AND COLLECTING LOCAL AD VALOREM PROPERTY TAXES ON CERTAIN MOTOR VEHICLES, created a new procedure for collecting property taxes on motor vehicles effective January 1, 1993. Under the new procedure, all motor vehicles other than public service company vehicles and manufactured homes are classified for listing, assessment, and taxation separately from other classes of property. Those classified vehicles that are registered with the Division of Motor Vehicles will be taxed on a revolving, year-round schedule. Every month, the Division of Motor Vehicles will give each county a list of the motor vehicles in the county for which registration was renewed or obtained two months earlier. The county will then list and appraise the vehicles and send the vehicle owners a bill for the county, municipal, and special district taxes due. If the owner does not pay the taxes due on a vehicle, the Division of Motor Vehicles will refuse to renew the vehicle registration the following year unless the owner obtains a receipt showing that the taxes have been paid.

This legislation was enacted to improve the collection rate for property taxes on motor vehicles and thereby recover the estimated $11.1 million in property tax revenue that is lost each year under the current collection system. After the legislation was passed by the General Assembly, a number of technical and administrative improvements that could be made to the law were discovered by the groups that had worked together to develop the new system: the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the Division of Motor Vehicles, the North Carolina County Assessors' Association, the Department of Revenue, and the Institute of Government. Legislative Proposal 4, drafted by William A. Campbell of the Institute of Government, contains the technical and administrative changes recommended to the Committee by these groups.

Chapter 624 provided that the new procedure for taxing motor vehicles would not apply to vehicles owned or leased by a public service company. The exemption was created because most public service company property is assessed by the Department of Revenue and the taxable values of the property are assigned to local governments. For this reason, listing and appraisal under the new procedure created for classified vehicles would not be practical. Some passenger cars and service vehicles of public service

companies are not, however, assessed by the Department of Revenue under current law. Section 1 of Legislative Proposal 4 provides that, like other public service company rolling stock, passenger cars and service vehicles will now be assessed by the Department of Revenue. This uniform taxation procedure for public service company vehicles will be consistent with the exemption of public service company vehicles from the year-round system provided in Chapter 624.

Chapter 624 provided that the new procedure for taxing motor vehicles would not apply to manufactured homes. Section 3 of Legislative Proposal 4 provides that the new procedure will not apply to mobile offices and mobile classrooms as well. Section 3 also exempts vehicles that, pursuant to G.S. 20-51, are not required to be registered. Vehicles that are not required to be registered include farm tractors, farm trailers, and mopeds. These additional exemptions from the new procedure are necessary because the procedure is triggered by registration of a vehicle. Vehicles that are not covered by the new procedure will continue to be taxed under the "old" procedure: they will be listed as of January 1 of each year and taxed on the same schedule as other property; if unpaid, taxes on these vehicles will be a lien on the taxpayer's real property; and municipal taxes on these vehicles will be collected by the municipal tax collector unless the municipality has contracted with the county for collection of all property taxes.

If a motor vehicle to which the new procedure would otherwise apply is not registered, that vehicle is to be taxed under the "old" procedure as well. Sections 2, 5, 6, 8, and 10 of Legislative Proposal 4 clarify that the new procedure applies to registered motor vehicles and the old procedure applies to motor vehicles that have not been registered.

Chapter 624 provided that the value of a registered motor vehicle taxed under the new procedure is to be determined as of January 1 preceding the date the registration is obtained or renewed. Section 4 of Legislative Proposal 4 amends G.S. 105-330.2(a) to clarify that if the vehicle's value cannot be determined as of the preceding January 1, the vehicle will be appraised as of the date that model vehicle was first offered for sale at retail in this State.

In addition, Section 4 amends G.S. 105-330.2(b) to provide that a taxpayer who wishes to appeal the value, situs, or taxability of a classified motor vehicle must file the appeal with the assessor within 30 days after the date on the tax notice. Section 9 authorizes the board of county commissioners to appoint a special committee to hear appeals of classified motor vehicles' value, situs, and taxability.

Section 6 of Legislative Proposal 4 amends G.S. 105-330.5(a) to specify the information that must be on the tax notice sent to a classified vehicle owner and reverses the order of subsections (b) and (c) of G.S. 105-330.5.

Chapter 624 provided that a vehicle owner who surrendered a motor vehicle's license plates during the tax year could get a refund or release of the taxes due on the vehicle for the remainder of the tax year. Section 7 of Legislative Proposal clarifies that the owner must also have transferred the vehicle to a new owner to be eligible for the release or refund of taxes. Section 7 also requires the owner to apply for the release or refund within 60 days after surrendering the plates.

Most motor vehicles are registered under the staggered system, which provides for vehicle registrations to expire during different months of the year so that all registrations do not have to be renewed at one time. Commercial vehicles and some private passenger vehicles are, however, registered under an annual system; their registrations are due to be renewed each year between December 1 and the following February 15. In order to simplify the procedure for taxation of these vehicles, Section 11 of Legislative Proposal 4 provides that the list of vehicles to be sent by the Division of Motor Vehicles to counties in March will include all of these vehicles. Otherwise, vehicles registered under the annual system would have been spread out among the March, April, and May lists, which would have created administrative difficulties for the Division of Motor Vehicles.

Chapter 624 was enacted to become effective for the tax year beginning July 1, 1993. The effective date specified that the first vehicles to be taxed under the new system would be vehicles registered in March 1993 and vehicles whose registration expired in March 1993. This effective date was designed to provide a smooth transition from the old system to the new without resulting in tax overlap or tax gaps between the old annual tax schedule and the new year-round tax schedule. The effective date did not, however, take into consideration vehicles registered under the annual system; as written, the effective date would have enabled those vehicles to escape taxation for the 1993 tax year. To close this gap, Section 12 of Legislative Proposal 4 amends the effective date of Chapter 624 to provide that the new procedure will apply to annual-system vehicles renewed in the period beginning December 1, 1992. For the 1993 tax year only, taxes will be due on these vehicles July 1, 1993. For subsequent tax years, Section 5 of Legislative Proposal 4 amends G.S. 105-330.4(a) to provide that taxes on annual-system vehicles will be due May 1.

Section 13 provides that Legislative Proposal 4 becomes effective January 1, 1993.

Proposal 4

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

This proposal combines a series of technical changes to the legislation in House Bill 20 passed by the 1991 General Assembly, which instituted a new method of collecting local property taxes on motor vehicles.

Here is a short description of the proposed changes:

1. Clarifies that motor vehicles owned by public service companies are to be assessed by the Department of Revenue
2. Clarifies that there is no change in the method of taxing vehicles not required to be registered
3. Authorizes the date first offered for sale as the appraisal date of new vehicles whose value cannot be determined as of January 1
4. Specifies that an appeal must be filed with the tax assessor within 30 days of date of the tax notice to remain valid
5. Information that must be shown on the tax notice is specified
6. Specifies conditions under which taxpayer will receive a refund or prorated release
7. Authorizes county commissioners to appoint a committee to hear appeals of motor vehicle assessments
8. Provides that vehicles registered on an annual basis (large trucks) will be processed in month of January

Effective Date:

January 1, 1993

Fiscal Effect:

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

PROPOSAL 5 (91-LCX-273(1.10)Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Representatives Gamble; Colton, Jarrell, Justus, Kerr, Lilley, Luebke, Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-102.6 reads as rewritten:

"**§ 105-102.6. Producers of newsprint publications.**

(a) Purpose. The purpose of this section is to provide an incentive for the use of recycled newsprint.

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

(1) Net tonnage of newsprint consumed. -- The weight in metric tons of all newsprint ~~consumed~~ acquired by a producer, less the weight in metric tons of any acquired newsprint ~~consumed by~~ the producer ~~diverted~~ diverts from solid ~~waste by the producer.~~ waste.

(2) Newsprint. -- Uncoated paper, whether supercalendered or machine finished, made primarily from mechanical wood pulp combined with some chemical wood pulp, weighing between 24.5 and 35 pounds for 500 sheets of paper 2 feet by 3 feet in size, and having a brightness of less than 60.

(3) Postconsumer waste paper. -- Paper products, generated by a business or consumer, that have served their intended end uses and have been separated or diverted from solid waste.

(4) Producer. -- A person engaged in the business of producing publications printed on newsprint who acquires and uses newsprint for this business.

(5) Recycled content percentage. -- The percentage by weight of the total net tonnage of newsprint consumed by the producer that is postconsumer waste paper.

(c) Minimum Recycled Content Percentage. The recycled content percentage of ~~every person engaged in the business of publishing or printing publications printed on~~ newsprint consumed by a producer shall equal or exceed the following minimum recycled content percentages:

During 1991 and 1992, twelve percent (12%).
During 1993, fifteen percent (15%).
During 1994, twenty percent (20%).
During 1995, twenty-five percent (25%).
During 1996, thirty percent (30%).
During 1997, thirty-five percent (35%).
After 1997, forty percent (40%).

(d) Tax. Every producer shall apply for and obtain from the Secretary of Revenue a newsprint producer tax reporting number. In addition, each producer whose recycled content percentage for a calendar quarter is less than the applicable minimum recycled content percentage provided in subsection (c) for a calendar quarter shall, within 10 days after the last day of the quarter, report to the Secretary the amount in metric tons by which (i) the applicable minimum recycled content percentage multiplied by the net tonnage of newsprint consumed by the producer in the preceding quarter exceeds (ii) the actual tonnage of postconsumer waste paper consumed by the producer during the preceding quarter, and shall pay a tax on the amount reported at the rate of fifteen dollars ($15.00) per ton. This tax is due when the report is filed. No county, city, or town may impose a license tax on the business taxed under this section.

(e) Exemption. The tax levied in this section does not apply to an amount calculated pursuant to subsection (d) to the extent the amount is attributable solely to the producer's inability to obtain sufficient recycled content newsprint because (i) recycled content newsprint was not available at a price comparable to the price of virgin newsprint; (ii) recycled content newsprint of a

quality comparable to virgin newsprint was not available; or (iii) recycled content newsprint was not available within a reasonable period of time during the reporting period. In order to claim the exemption provided in this subsection, a producer must certify to the Secretary of Revenue:

(1) The amount of virgin newsprint consumed by the producer during the reporting period solely for one of the reasons listed above.

(2) That the producer attempted to obtain recycled content newsprint from every manufacturer of recycled content newsprint that offered to sell recycled content newsprint to the producer within the preceding 12 months.

(3) The name, address, and telephone number of each manufacturer contacted, including the company name and the name of the company's individual representative or employee.

(f) Use of Proceeds. The Secretary of Revenue shall, on a quarterly basis, credit the net proceeds of the tax imposed by this section to the Solid Waste Management Trust Fund created in G.S. 130A-309.12."

Sec. 2. G.S. 105-134.6 reads as rewritten:

"**§ 105-134.6. Adjustments to taxable income.**

(a) S Corporations. -- The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b) and (c) of this section.

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

(1) Interest upon the obligations of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.

(2) Interest upon obligations and gain from the disposition of obligations to the extent the interest or gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement

annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.

(5) Refunds of ~~State,~~ state, local, and foreign income taxes included in the taxpayer's gross income.

(6) a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.

b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.

c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable year.

d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.

(7) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7. The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article 1 of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and

the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary of Revenue may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance tax return that the beneficiary needs to compute the deduction allowed by this subdivision.

(8) The amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction, to the extent that a similar credit is not allowed by this Division for the amount.

(c) Additions. -- The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in gross income:

(1) Interest upon the obligations of states, other than this State, and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as ~~State,~~ state, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4) of the Code and the amount by

which the taxpayer's personal exemptions have been increased for inflation under section 151(d)(4) of the Code. For the purpose of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The fair market value, up to a maximum of one hundred thousand dollars ($100,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

Sec. 3. G.S. 105-164.11 reads as rewritten:

"**§ 105-164.11. Excessive and erroneous collections.**

When the tax collected for any period is in excess of the total amount ~~which~~ that should have been collected, the total amount collected must be paid over to the ~~Secretary less the compensation to be allowed the retailer as hereinafter set forth.~~ Secretary. When tax is collected for any period on exempt or nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund ~~thereof~~ shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously charged. This provision shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount ~~which~~ that should have been collected."

Sec. 4. G.S. 105-188(g) reads as rewritten:

"(g) A donor ~~shall be~~ is entitled to a total exemption of one hundred thousand dollars ($100,000) to be deducted from gifts made to donees named in subdivision ~~(1) of subsection (f),~~ (f)(1), less the sum of amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in its entirety in a single ~~year,~~ year or may be spread over a period of years. When this exemption has been exhausted, no further exemption is allowable. When the exemption or any ~~portion thereof~~ part of the exemption is applied to gifts to more than one donee in any one calendar year, ~~said~~ the exemption shall be apportioned against ~~said~~ the gifts in the same ratio as the gross value of the gifts to each donee is to

the total value of ~~said~~ all the gifts made in the calendar ~~year in which said gifts are made.~~ year. No exemption ~~shall be~~ is allowed ~~to~~ a donor for gifts made to donees named in ~~subdivisions (2) and (3) of subsection (f).~~ subdivision (f)(2) or (f)(3)."

Sec. 5. G.S. 105-203 reads as rewritten:

"**§ 105-203. Shares of stock.**

All shares of stock (including shares and units of ownership of mutual funds, investment trusts, and investment funds) owned by residents of this State or having a business, commercial, or taxable situs in this State on December 31 of each year, with the exception herein provided, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars ($100.00) of the total fair market value of the stock on December 31 of each year less the proportion of the value that is equal to:

(1) In the case of a taxpayer that is a corporation, the proportion of the dividends upon the stock deductible by the taxpayer in computing its income tax liability under G.S. 105-130.7 without regard to the fifteen thousand dollar ($15,000) limitation under G.S. 105-130.7; and

(2) In the case of a taxpayer that is not a corporation, the proportion of the dividends upon the stock that would be deductible by the taxpayer, if the taxpayer were a corporation, in computing its income tax liability under the provisions of G.S. 105-130.7(1),(2),(3), ~~and (3a),~~ (3a), and (5), without regard to the fifteen thousand dollar ($15,000) limitation under G.S. 105-130.7.

~~The tax herein levied shall~~ This tax does not apply to shares of stock in building and loan associations or savings and loan associations ~~which pay a tax as levied~~ that pay a tax under Article 8D of ~~Chapter 105 of the General Statutes,~~ this Chapter, nor to shares of stock owned by any corporation ~~which~~ that has its commercial domicile in North Carolina, where the corporation owns more than fifty percent (50%) of the outstanding voting stock.

~~The tax herein levied shall~~ This tax does not apply to units of ownership in an investment trust, the corpus of which is composed (i) entirely of obligations of this State or (ii) entirely of obligations of the United States and of this State, at least eighty percent (80%) of the fair market value of which represents obligations of this State. For the purpose of this paragraph, 'State' includes the State of North Carolina, political

subdivisions of this State, and agencies of ~~such~~ these governmental units; 'United States' includes the United States and its possessions, and the District of Columbia; 'obligations' includes bonds, ~~notes~~ notes, and other evidences of debt. In order for the exemption provided ~~for~~ in this paragraph to apply, ~~it shall be the duty of~~ the trustees of an investment trust ~~to provide to~~ must provide the Secretary of Revenue, in ~~form satisfactory to him and~~ the form required by the Secretary, not later than December 31 of the year with respect to which the exemption applies, information sufficient to establish the applicability of this exemption.

Indebtedness incurred directly for the purchase of shares of stock may be deducted from the total value of those ~~shares; provided,~~ shares if the specific shares of stock so purchased are pledged as collateral to secure the indebtedness; ~~provided further, that~~ however, only so much of the indebtedness may be deducted as is in the same proportion as the taxable value of the shares of stock is to the total value of the shares of stock."

Sec. 6. G.S. 105-213(a) reads as rewritten:

"(a) There is annually appropriated from the General Fund to counties and municipalities the amount of revenue collected under this Article during the 1989-90 fiscal year, plus an amount equal to forty percent (40%) of the tax collected on accounts receivable during the 1989-90 fiscal year and less an amount equal to the costs during the preceding fiscal year of:

(1) Refunds made during the fiscal year of taxes levied under this Article.
(2) The Department of Revenue to collect and administer the taxes levied under this Article.
(3) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
(4) The Property Tax Commission.
(5) The Institute of Government in operating a training program in property tax appraisal and assessment.
(6) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.

The appropriation shall be distributed by August 30 of each year. The appropriation shall be included in the Current Operations Appropriations Act.

The appropriation shall be allocated among the counties in proportion to the amount of taxes collected under this Article in each county during the preceding fiscal year. The Secretary of Revenue shall keep a separate record by counties of the taxes

collected under this Article. The Secretary shall allocate the amount appropriated under this section to the counties according to the county in which the taxes were collected. The amounts so allocated to each county shall in turn be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary of Revenue shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified. The amount based on forty percent (40%) of the tax collected on accounts receivable shall be drawn from the Local Government Tax Reimbursement Reserve and the amount based on the ~~net~~ amount of revenue collected under this Article shall be drawn from the Local Government Tax Sharing Reserve.

For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

The chairman of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to allocate the amount appropriated by this section. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount appropriated by this section. The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and

activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires."

Sec. 7. G.S. 105-228.5A reads as rewritten:

"**§ 105-228.5A. Credit against gross premium tax for assessments paid to the Insurance Guaranty Association and the Life and ~~Accident and~~ Health Insurance Guaranty Association.**

(a) The following definitions apply in this section:

(1) Assessment. -- An assessment as described in G.S. 58-48-35 or an assessment as described in ~~G.S. 58-62-40.~~ G.S. 58-62-41.

(2) Association. -- The North Carolina Insurance Guaranty Association created under G.S. 58-48-25 or the North Carolina Life and ~~Accident and~~ Health Insurance Guaranty Association created under ~~G.S. 58-62-25.~~ G.S. 58-62-26.

(3) Commissioner. -- Commissioner of Insurance.

(4) Member insurer. -- A member insurer as defined in G.S. 58-48-20 or a member insurer as defined in ~~G.S. 58-62-20.~~ G.S. 58-62-16.

(b) A member insurer who pays an assessment is allowed as a credit against the tax imposed under G.S. 105-228.5 an amount equal to twenty percent (20%) of the amount of the assessment in each of the five taxable years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all assessments for which it has not taken a credit under this section may be credited against its premium tax liability for the year in which it ceases doing business. The amount of the credit allowed by this section may not exceed the member insurer's premium tax liability for the taxable year.

(c) Any sums that are acquired by refund, under either G.S. 58-48-35 or ~~G.S. 58-62-40,~~ G.S. 58-62-41, from the Association by member insurers, and that have previously been offset against premium taxes as provided in subsection (b) of this section, shall be paid by the member insurers to this State in the manner required by the Commissioner. The Association shall notify the Commissioner that the refunds have been made."

Sec. 8. G.S. 105-228.24 reads as rewritten:

"**§ 105-228.24. Tax limitations.**

(a) The taxes levied in this Article are in lieu of all other taxes except:

(1) Ad valorem taxes imposed upon real property and tangible personal ~~property;~~ property.

(2) Ad valorem taxes imposed upon intangible personal property under G.S. ~~105-199, 105-200, 105-204 and 105-205; and~~ 105-204.

(3) Sales and use taxes levied by the State or any of its taxing units.

(b) Counties, ~~cities~~ cities, and towns may not levy a license tax on a savings and loan association subject to taxation under this Article."

Sec. 9. G.S. 105-236(11) reads as rewritten:

"(11) Any violation of ~~the provisions of this Subchapter, Subchapter V of Chapter 105 or Chapter 18B of the General Statutes shall be deemed~~ Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary ~~of Revenue~~ in Raleigh. The certificate of the Secretary ~~of Revenue to the effect~~ that a tax has not been paid, ~~that~~ a return has not been filed, or ~~that~~ information has not been supplied, as required by ~~or under the provisions of this Subchapter, or by Subchapter V of Chapter 105 or Chapter 18B of the General Statutes, shall be~~ law, is prima facie evidence that ~~such~~ the tax has not been paid, ~~that such~~ the return has not been ~~filed or that such~~ filed, or the information has not been supplied.

The term 'person' as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership who as ~~such~~ officer, employee, or member is under a duty to perform the act in respect to which the violation occurs."

Sec. 10. G.S. 105-237.1(a) reads as rewritten:

"(a) The Secretary of Revenue, with the approval of the Attorney General, is authorized to compromise the amount of liability of any taxpayer for taxes due under ~~Subchapters I or V of this Chapter or under Chapter 18B of the General Statutes~~ Subchapter I, V, or VIII of this Chapter or under Article 3 of Chapter 119 of the General Statutes and to accept in full settlement of ~~such~~ the liability a lesser amount than that

asserted to be due when in the opinion of the Secretary and the Attorney General ~~such~~ the compromise settlement is in the best interest of the State. When made other than in the course of litigation in the courts of the State on an appeal from an administrative determination or in a civil action brought to recover from the Secretary, the basis for ~~such~~ the compromise must also conform to the conditions set out in this section. ~~Such~~ The compromise settlement may be made only after a final administrative or judicial determination of the liability of the taxpayer.

~~Such a~~ A compromise settlement may be made only ~~upon a finding that:~~ if one or more of the following findings is made:

(1) There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the ~~facts; or~~ facts.

(2) The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to or in excess of the amount offered in ~~compromise; or~~ compromise.

(3) Collection of a greater amount than that offered in compromise ~~settlement~~ is improbable, and the funds or a substantial portion of the funds offered in the settlement ~~settlement, or a substantial portion thereof,~~ come from sources from which the Secretary could not otherwise ~~collect; or~~ collect.

(4) A federal tax assessment arising out of the same facts has been compromised with the federal government on the same or a similar basis as that proposed to the State and the Secretary could probably not collect an amount equal to or in excess of that offered in compromise.

For the purposes of this section a taxpayer may be considered insolvent only if (i) there is an established status of insolvency by either a judicial declaration of a status necessarily or ordinarily involving insolvency or by a legal proceeding in which the insolvency of the taxpayer would ordinarily be determined or ~~thereby be~~ made evident or ~~if~~ (ii) it is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future. Whenever a compromise is made by the Secretary pursuant to this ~~section,~~ section and the unpaid amount of the tax assessed is one hundred dollars ($100.00) or more, the Secretary shall place ~~there shall be placed~~ on file in the office of the Secretary a written opinion, signed by the Secretary and the Attorney General,

setting forth the amount of tax or additional tax assessed, the amount actually paid in accordance with the terms of the compromise, and a summary of the facts and reasons upon which acceptance of the compromise is based. ~~based, provided, however, that such opinion shall not be required with respect to the compromise of any taxpayer's liability where the unpaid amount of tax assessed (including interest, penalty and additional tax) is less than one hundred dollars ($100.00).~~"

Sec. 11. G.S. 105-242(a)(1) reads as rewritten:

"(1) The Secretary may issue a warrant or an order under the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, including penalties and interest, and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant, not less than 60 days from the date of the warrant; the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner."

Sec. 12. G.S. 105-242(b) reads as rewritten:

"(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, including property held in the Escheat Fund, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and

delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect such attachment or garnishment the Secretary of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Secretary of Revenue or by any officer having authority to serve summonses or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall:

(1) Show the name of the taxpayer, and if known his Social Security number or federal tax identification number and his address;

(2) Show the nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and

(3) Be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of said notice, answer the same by sending to the Secretary of Revenue by registered or certified mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Secretary with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Secretary upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Secretary by registered or certified mail; if the Secretary admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or

garnished hereunder which is not affected by such defense or setoff shall be remitted to the Secretary as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Secretary shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Secretary of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Secretary of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this Subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Secretary at any time within 12 months after said intangible is paid to him and if the Secretary finds that such party is lawfully entitled thereto or to any part

thereof, he shall pay the same to such party as provided for refunds by ~~G.S. 105-267.1,~~ G.S. 105-266.1, and if such payment is denied, said party may appeal from the determination of the Secretary under the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.

This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief fiscal officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer."

Sec. 13. G.S. 105-251.1 is repealed.

Sec. 14. G.S. 105-253(c) is repealed.

Sec. 15. G.S. 105-256(c)(3) reads as rewritten:

"(3) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice ~~are~~ is furnished under G.S. 7A-343.1."

Sec. 16. G.S. 105-269.3 reads as rewritten:

"**§ 105-269.3. Administration and enforcement of Subchapter V and fuel inspection fee.**

This Article applies to taxes levied under Subchapter V of this Chapter ~~and to inspection fees levied under Chapter 119 of the General Statutes.~~ and to inspection fees levied under Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers and other appropriate personnel in the Division of Motor Vehicles of the Department of Transportation may assist the Department of Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers of the Division of Motor Vehicles have the power of peace officers in matters concerning the enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes."

Sec. 17. G.S. 105-277A(c2) reads as rewritten:

"(c2) Supplemental Distribution. -- On or before March 20, 1989, the Secretary shall determine, with respect to each county and city, whether the sum of (i) the amount the county or city received under subsection (c), plus (ii) the amount the county or city received under subsection (c1), plus (iii) three and four-tenths percent (3.4%) of the total distribution received by the county or city under G.S. 105-472, 105-486, ~~105-493,~~ 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988, is less than ninety percent (90%) of the amount of taxes the county or city actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year. If that sum is less than ninety percent (90%) of the amount of taxes the county or city actually levied on those inventories for the 1987-88 tax year, the Secretary shall distribute to that county or city a supplemental amount equal to the amount by which ninety percent (90%) of the taxes it actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year exceeds the total of subdivisions (i), (ii), and (iii).

Except as provided in subsection (g) of this section, each year thereafter, as soon as practicable after January 1, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection."

Sec. 18. G.S. 105-277A(d) reads as rewritten:

"(d) Definitions. -- ~~As used in this section, the term~~ The following definitions apply in this section:

(1) 'City' has the same meaning as in ~~G.S. 153A-1(1);~~ G.S. 153A-1(1).

(2) 'City's inventory loss' means the city's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the city collected taxes in 1987, but whose tax rates were not included in the city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the city under G.S. 105-472, 105-486, ~~105-493,~~ 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, ~~1988;~~ 1988.

(3) 'County's inventory loss' means the county's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the average rate for each special district for which the county collected taxes in 1987, but whose tax rates were not included in the county's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States

Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county under G.S. 105-472, 105-486, ~~105-493,~~ 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, ~~1988;~~ 1988.

(4) 'Special district's inventory levy' means the special district's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the ~~district;~~ district.

(5) 'Taxing unit' means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section."

Sec. 19. G.S. 105-288(c) reads as rewritten:

"(c) Oath. -- Each member of the Property Tax Commission, as the appointed holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following ~~sentence~~ phrase added to it: ~~'That~~ 'that I will not allow my actions as a member of the Property Tax Commission to be influenced by personal or political friendships or ~~obligations.'~~ obligations,'. "

Sec. 20. G.S. 105-295 reads as rewritten:

"**§ 105-295. Oath of office for assessor.**

The assessor, as the holder of an appointed office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following ~~sentence~~ phrase added to it: ~~'That~~ 'that I will not allow my actions as assessor to be influenced by personal or political friendships or ~~obligations.'~~ obligations,'. The oath must be filed with the clerk of the board of county commissioners."

Sec. 21. G.S. 105-322(c) reads as rewritten:

"(c) Oath. -- Each member of the ~~Board of Equalization and Review~~ board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following ~~sentence~~ phrase added to it: ~~'That~~ 'that I will not allow my actions as a member of the ~~Board of Equalization and Review~~ board of equalization and review to be influenced by personal or political friendships or ~~obligations.'~~ obligations,'. The oath must be filed with the clerk of the board of county commissioners."

Sec. 22. G.S. 105-349(g) reads as rewritten:

"(g) Oath. -- Every tax collector and deputy tax collector, as the holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following ~~sentence~~ phrase added to it: ~~'That~~ 'that I will not allow my actions as tax collector to be influenced by personal or political friendships or ~~obligations.'~~ obligations,'. The oath must be filed with the clerk of the governing body of the taxing unit."

Sec. 23. Section 15 of Chapter 441 of the 1991 Session Laws is repealed.

Sec. 24. Section 6 of Chapter 652 of the 1991 Session Laws reads as rewritten:

"Sec. 6. Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are ~~repealed.~~ repealed to clarify that G.S. 153A-293, as amended by this act, is a Statewide statute and not a local statute. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act."

Sec. 25. G.S. 65-64(c) is repealed.

Sec. 26. G.S. 75-81(3) reads as rewritten:

"(3) 'Motor Fuel' shall mean a refined or blended petroleum product used for the propulsion of self-propelled motor vehicles; the term includes 'motor fuel' ~~shall also include the same meaning~~ as defined ~~by G.S. 105-430(1)~~ in G.S. 105-430 and ~~fuel~~ 'fuel' as defined ~~by G.S. 105- 449.2(3).~~ in G.S. 105-449.2."

Sec. 27. G.S. 120-123(27) reads as rewritten:

"(27) The Property Tax Commission, as established by G.S. ~~143B-223.~~ 105-288."

Sec. 28. G.S. 130A-62 reads as rewritten:

"**§ 130A-62. Annual budget; tax levy.**

(a) A sanitary district shall operate under an annual balanced budget adopted in accordance with the Local Government Budget and Fiscal Control Act.

(b) A sanitary district has the option of either collecting its own taxes or having its taxes collected by the county or counties in which it is located. Unless a district takes affirmative action to collect its own taxes, taxes shall be collected by the county.

(c) For sanitary districts whose taxes are collected by the county, before May 1 of each year, the assessor of each county in which the district is located shall certify to the district board

the total assessed value of property in the county subject to taxation by the ~~district, and the county's assessment ratio.~~ district. By July 1 or upon adoption of its annual budget ordinance, the district board shall certify to the county board of commissioners the rate of ad valorem tax levied by the district on property in that county. ~~If the assessment ratios are not identical in all counties, the district budget ordinance shall levy separate rates of ad valorem taxes for each county. These rates shall be adjusted so that the effective rate is the same for all property located in the district. The "effective rate" is the rate of tax which will produce the same tax liability on property of equal appraised value.~~ Upon receiving the district's certification of its tax levy, the county commissioners shall compute the district tax for each taxpayer and shall separately state the district tax on the county tax receipts for the fiscal year. The county shall collect the district tax in the same manner that county taxes are collected and shall remit these collections to the district at least monthly. Partial payments shall be proportionately divided between the county and the district. The district budget ordinance may include an appropriation to the county for the cost to the county of computing, ~~billing~~ billing, and collecting the district tax. The amount of the appropriation shall be agreed upon by the county and the district, but may not exceed five percent (5%) of the district levy. Any agreement shall remain effective until modified by mutual agreement. The amount due the county for collecting the district tax may be deducted by the county from its monthly remittances to the district or may be paid to the county by the district.

(d) Sanitary districts electing to collect their own taxes shall be deemed cities for the purposes of the Machinery ~~Act.~~ Act, Subchapter II of Chapter 105 of the General Statutes. ~~If a district is located in more than one county, the district board may adopt the assessments placed upon property located in the district by the counties in which the district is located if, in the opinion of the board, the same appraisal and assessment standards will apply uniformly throughout the district. If the board determines that adoption of the assessments fixed by the counties will not result in uniform appraisals and assessments throughout the district, the board may, by horizontal adjustments, equalize the appraisal values fixed by the counties and in accordance with the procedure prescribed in the Machinery Act, select and adopt an assessment ratio to be applied to the appraised values of property subject to district taxation as~~

~~equalized by the board. Taxes levied by the district shall be levied uniformly on the assessments.~~"

Sec. 29. G.S. 159-55(a)(5) reads as rewritten:

"(5) The percentage that the net debt bears to the ~~appraised~~ assessed value of property subject to taxation by the issuing unit."

Sec. 30. Section 2 of this act is effective retroactively for taxable years beginning on or after January 1, 1989. The remainder of this act is effective upon ratification.

Explanation of Proposal 5

Legislative Proposal 5 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.

Section	Explanation
1	Amends the new privilege tax on producers of newsprint publications, imposed by G.S. 105-102.6, to make the definition of "net tonnage of newsprint consumed" easier to understand and to remove a phrase in subsection (c) that was inadvertently left in the statute because of an error in engrossing an amendment.
2	Clarifies that the individual income tax adjustments for state and local income taxes paid apply to taxes of all states.
3	Deletes a reference to the former 3% merchant's discount. The merchant's discount was repealed effective August 1, 1987, by the School Facilities Finance Act of 1987, Chapter 622 of the 1987 Session Laws.
4	Inserts the missing word "be" in the second sentence of the subsection and corrects style.
5	Adds a cross-reference to the rules for apportioning to this State income of holding companies, so that the proper taxable percentage may be calculated under the intangibles tax for shares of stock in holding companies.
6	Amends the statute concerning the appropriation of intangibles tax revenue to local governments to make consistent the references in the statute to the amount to be distributed. The word "net" before "amount" needs to be deleted to conform to the language in the remainder of the statute.
7	In 1991, certain insurance statutes were rewritten and renumbered. This section changes references to those statutes to reflect the 1991 rewrite.
8	Deletes references to the following repealed intangibles tax statutes: 105-199 (money on deposit); 105-200 (money on hand); and 105-205 (funds on deposit with insurance companies). The remaining reference is to 105-204 (beneficial interest in foreign trusts).
9	Deletes an inaccurate reference and supplies missing references to the laws governed by the penalty provisions of the Revenue Act.

Section	Explanation
10	Deletes an inaccurate reference and supplies missing references to the laws governed by the compromise provisions of the Revenue Act. Also clarifies the language of the statute.
11	Inserts a word omitted in a recent rewrite.
12	Changes a cross-reference to a recently repealed statute.
13	Deletes the requirement that financial institutions report currency transactions over $10,000. This requirement is similar to and duplicates the federal requirement, resulting in dual reporting. The State-required reports are not utilized by the Department of Revenue or the State Bureau of Investigation to any extent because of a lack of resources. In addition, the Department has access to the information it needs through its tax exchange agreement with the Internal Revenue Service. The Department of Revenue requested this repeal; the State Bureau of Investigation concurs.
14	The 1990 rewrite of the Business Corporation Act expedited the procedure for dissolving a domestic corporation. See Article 14 of Chapter 55 of the General Statutes. The new law eliminated the former requirement of a tax clearance letter from the Department of Revenue. This section conforms the Revenue Act to the Business Corporation Act by repealing the corresponding provision in Chapter 105 of the General Statutes.
15	Corrects a grammatical error; the verb "are" should be the singular "is".
16	Deletes a phrase that appears twice in the statute. Section 16 of Chapter 42 of the 1991 Session Laws rewrote this statute and contained a redlining error so that the phrase "and to inspection fees levied under Chapter 119 of the General Statutes." appears twice.
17	Eliminates a cross reference to a repealed statute.
18	Eliminates a cross reference to a repealed statute.
19-20	Correct incorrect diction and punctuation.
21	Changes improper upper case to lower case and corrects incorrect diction and punctuation.
22	Corrects incorrect diction and punctuation.
23	Repeals a temporary provision concerning the marking of fuel storage tanks. The provision has been superseded by G.S. 105-449.17, which became effective January 1, 1992.
24	Inserts a phrase at the request of the Codifier to make it absolutely clear that the portion of G.S. 153A-292 that was not redlined by the 1991 Session Law remains part of the law.

Section	Explanation
25	Repeals a statutory provision that duplicates another provision, G.S. 65-55(c)(2), and erroneously states the amount of the minimum deposit a cemetery operator must make to a cemetery care and maintenance fund.
26	Corrects a cross reference to the definition of motor fuel in G.S. 105-430 and conforms both cross references to other definitions to the standard drafting format. Chapter 441, Section 1, of the 1991 Session Laws rewrote G.S. 105-430 to, among other things, put the definitions in that statute in alphabetical order. As a result of the rearrangement, the definition of motor fuel is in G.S. 105-430(4) instead of 105-430(1). Standard drafting format, however, requires the deletion of the subdivision reference to avoid this type of problem in the future.
27	Corrects an incorrect cross reference. The Property Tax Commission statutes were recodified by Chapter 110 of the 1991 Session Laws and no longer appear in Chapter 143B.
28	Eliminates references to assessment ratios in the sanitary district statute and eliminates unnecessary descriptions of procedures that are set out in the Machinery Act.
29	Makes the use of "assessed" and "appraised" in Chapter 159 of the General Statutes consistent. Chapter 11 of the 1991 Session Laws repealed obsolete references in the Local Government Bond Act to assessment ratios. This section is a further conforming change.
30	Provides that Section 2 of the bill is effective retroactively beginning with the 1989 tax year and that the rest of the bill is effective upon ratification.

Proposal 5

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

Numerous technical and clarifying changes are made to the revenue laws and related statutes.

Please refer to the previous explanation prepared by committee counsel for a section-by-section analysis of the proposed changes.

Effective Date

Section 2 is effective retroactively beginning with the 1989 tax year; all other sections are effective upon ratification.

Fiscal Effect

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 6 (91-LC-288(1.10)Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Sales Tax Certificate of Resale. (Public)

Sponsors: Senators Winner; Carter, Plexico, Seymour, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RELIEVE A SELLER WHO SELLS PROPERTY UNDER A CERTIFICATE OF RESALE OF THE BURDEN OF PROVING THAT THE SALE WAS FOR RESALE AND TO PROVIDE A PENALTY FOR A PURCHASER WHO MISUSES A CERTIFICATE OF RESALE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.28 reads as rewritten:

"§ 105-164.28. ~~Resale certificate.~~ Certificate of resale.

A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) The seller acted in good faith in accepting the certificate of resale.

(2) The certificate is in the form required by the Secretary.

(3) The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.

(4) The purchaser is licensed under this Article or under the law of another taxing jurisdiction.

(5) The purchaser is engaged in the business of selling tangible personal property of the type sold.

A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.

~~The burden of proof that a sale of tangible personal property is not a sale at retail is upon the wholesale merchant or retailer who makes the sale unless he takes from the purchaser a certificate to the effect that the property is for resale. With respect to sales for resale the certificate relieves the wholesale merchant from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the license provided for in this Article. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the registration number issued to the purchaser and shall indicate the general character of the tangible personal property generally sold by the purchaser in the regular course of business. The certificate of resale shall be in such form as the Secretary shall prescribe. It shall be the duty of every wholesale merchant selling tangible personal property to a retailer for resale to make reasonable and prudent inquiry concerning the type and character of the tangible personal property as it relates to the principal business of the retailer.~~"

Sec. 2. G.S. 105-236 is amended by adding a new subdivision to read:

"(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess an additional tax, as a penalty, of two hundred fifty dollars ($250.00)."

Sec. 3. This act is effective upon ratification and applies to sales made on or after that date.

Explanation of Proposal 6

Under current law, sales tax applies to all retail sales of tangible personal property. A sale is not a retail sale if the buyer is going to resell the property; in this case, it is a wholesale sale. A person who is in the business of making retail or wholesale sales is required to be licensed by the Department of Revenue. When a licensed retailer or wholesaler buys property for resale (i.e., at wholesale), the buyer must give the seller a certificate of resale, stating that the property is for resale and indicating the type of property the buyer sells in the regular course of business. The seller who accepts this certificate of resale in good faith does not have to prove that the sale was not taxable if the seller makes "reasonable and prudent inquiry concerning the type and character of the tangible personal property as it relates to the principal business of the [seller]." G.S. 105-164.28. If the seller does not have a record of having made this inquiry, however, the seller may be assessed for sales tax on the sale. Legislative Proposal 6 would change this. It provides that if a seller sells property and accepts from the buyer in good faith a certificate of resale, the seller does not have the burden of proving that the purchaser resold the property.

Representatives of the North Carolina Automotive Wholesalers Association asked the Revenue Laws Study Committee to consider removing from the seller the burden of making this inquiry. They testified that in most cases it is easy for the seller to know when to reject a certificate of resale. For example, if the owner of a furniture business or a jewelry store tries to offer a certificate of resale when purchasing auto parts, the seller is, and should be, required to reject the certificate and to charge sales tax on the sale. But there are cases when the seller should not be expected to inquire about every sale and keep a record that the buyer intends to resell the property. For example, an automobile repair business that also sells auto parts at retail may purchase from a wholesaler automotive equipment that could be either for sale to customers or for use in making repairs. The wholesaler may not be able to inquire about the intended use of the product, particularly if the person picking up the product is a delivery employee or clerk who does not know what the product is to be used for. The representatives of the Automotive Wholesalers Association argued that it is unfair to hold the seller liable for sales tax in this situation because the seller cannot know whether the product was resold and because, if it was not, the purchaser, not the seller, is the one at fault.

The Revenue Laws Study Committee agreed that the burden on a seller of ascertaining that each sale is for resale should be modified, although the State's interest in preventing sales tax evasion should also be protected. Legislative Proposal 6 is the committee's recommendation to balance both these interests.

Legislative Proposal 6 provides that the seller must prove that property was sold for resale unless all of the following conditions are present: (i) the seller accepts a certificate of resale from the purchaser in good faith; (ii) the purchaser is licensed; (iii) the certificate states the purchaser's name, address, and registration number, and the type of property generally sold by the purchaser in the regular course of business; and (iv) the property sold is the same type of property that the purchaser is in the business of selling. If all of these conditions are met, the seller would not be required to prove that it made a reasonable and prudent inquiry that the property was purchased for resale and the sale would be considered not taxable unless the Department of Revenue proved that the purchaser did not in fact resell the property. If the Department of Revenue proved that the purchaser did not resell the property, the purchaser would be liable for the sales tax due on the purchase. The seller would remain jointly liable with the purchaser for this sales tax.

To deter purchasers from evading sales tax by offering a certificate of resale in cases where the property is not going to be resold, Legislative Proposal 6 would also add an additional penalty of $250.00 to be assessed by the Secretary of Revenue against a purchaser who misuses as certificate of resale. Legislative Proposal 6 would become effective upon ratification and would apply to sales made on or after the date of ratification.

Proposal 6

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

Under current law, if a purchaser buys tangible personal property for resale, a certificate of resale must be given to the seller for that property to be exempt from sales tax. The seller also has the obligation to make "reasonable and prudent inquiry concerning the type and character of the tangible personal property as it relates to the principal business of the retailer." This language puts the burden of proof on the wholesaler to prove that a sale accompanied by a certificate of resale is accurately represented as a sale for resale. If, in the determination of the Department of Revenue, the wholesaler has failed to make a "reasonable and prudent inquiry," the wholesaler may be liable for the amount of sales tax on sales made by the wholesaler to a retailer who does not resell that merchandise.

This proposal makes two changes to current law regarding buyer and seller responsibilities in a wholesale sale transaction:

1. It removes the obligation of the seller to establish whether or not a sale is for resale as long as the following condition are met:
   a. the wholesaler accepts the certificate from the purchaser in good faith,
   b. the purchaser is licensed with the Sales Tax Division,
   c. the certificate states the purchaser's name, address, sales tax registration number, and type of property sold in the purchaser's business, and
   d. the property for which a certificate of resale is offered is the same type of property sold in the purchaser's business.
2. It establishes a new penalty of $250 against a purchaser for misusing a certificate of resale.

Effective Date

Upon ratification

Fiscal Effect

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 7 (92-LJXZ-9(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Reinstate Sales Tax Deletions. (Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REINSTATE TWO SALES TAX PROVISIONS THAT WERE INADVERTENTLY DELETED IN PRIOR LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13(16) reads as rewritten:

"(16) Sales of any of the following ~~used articles~~ articles:

a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new ~~article.~~ article if tax is paid on the sales price of the new article. 'New article' means the original stock in trade of the ~~merchant,~~ merchant and is not limited to a newly manufactured ~~articles.~~ article.

b. An ~~The resale of articles~~ article repossessed by the ~~vendor shall likewise be exempt from gross sales taxable under this Article.~~ vendor if tax was paid on the sales price of the article."

Sec. 2. G.S. 105-164.38 reads as rewritten:

"**§ 105-164.38. Tax shall be a lien.**

The tax imposed by this Article shall be a lien upon all personal property of any person who is required by this Article to obtain a license to engage in business and who stops engaging

in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business shall file the return required by this Article within 30 days after transferring the business, transferring the stock of goods of the business, or going out of business. ~~Any~~

Any person to whom the business or the stock of goods was transferred shall withhold from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due until the person selling the business or stock of goods produces a statement from the Secretary showing that the taxes have been paid or that no taxes are due. If the person who buys a business or stock of goods fails to withhold an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, the buyer is personally liable for the unpaid ~~taxes,~~ taxes to the extent of the greater of the following:

(1) The consideration paid by the buyer for the business or the stock of goods.

(2) The fair market value of the business or the stock of goods.

The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property shall expire one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, a person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the person had incurred the original tax liability."

Sec. 3. Section 1 of this act becomes effective July 1, 1992. The remaining sections of this act are effective upon ratification.

Explanation of Proposal 7

As its title indicates, this proposal reinstates two unrelated sales tax provisions that were unintentionally deleted in prior legislation. The first provision concerns sales tax on items that are traded in or are repossessed. The second provision concerns the liability of a person who buys a business for sales taxes owed by the seller of the business.

Section 1 restores a pre-1989 condition on the sales tax exemption in G.S. 105-164.13(16) for property that is traded in for another item or has been repossessed. Before 1989, property that was traded in for another item was exempt from sales tax when it was resold only if sales tax was collected on the sale of the item for which the property was traded in. Similarly, the sale of a repossessed item was exempt from sales tax only if sales tax was paid on the original purchase of the item. This condition was inadvertently deleted by Chapter 692 of the 1989 Session Laws, the Highway Trust Fund legislation, which rewrote the exemption to remove motor vehicles.

Since October 1, 1989, the effective date of Chapter 692 of the 1989 Session Laws, G.S. 105-164.13(16) has exempted traded-in property from sales tax regardless of whether sales tax was paid on the item for which the property was traded in. Likewise, it has exempted the sale of repossessed items from sales tax regardless of whether sales tax was paid on the original sale of the item. To reverse this unintended result, Section 1 puts back into the law the deleted conditions on the exemption. The section becomes effective July 1, 1992.

Section 2 restores a provision that was inadvertently deleted by Chapter 690 of the 1991 Session Laws. Among other changes, that act rewrote G.S. 105-164.38 to provide an additional one-year period during which the Department of Revenue can assess unpaid sales taxes owed by a retail business against a person to whom the business was transferred. That statute requires the buyer of a business to withhold from the amount paid the seller the amount of any sales taxes the seller owes. If the buyer fails to withhold the required amount, the buyer is personally liable for the seller's taxes.

Before the enactment of Chapter 690, G.S. 105-164.38 allowed the State to assess against the buyer of the business the greater of the amount paid for the business or the

fair market value of the business. As amended by Chapter 690, however, the statute limits the amount that can be assessed to the amount paid for the business.

Effective upon ratification, Section 2 corrects this error by amending G.S. 105-164.38 to allow the State to assess the buyer of a retail business for the fair market value of the business. This addition is important in cases in which a business is sold at a price that is less than its fair market value. Section 2 is effective upon ratification.

Proposal 7

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

Section 1 reinstates a pre-1989 restriction on the sales tax exemption for property that is traded-in or repossessed. Prior to 1989, the subsequent sale of this property was exempt from sales tax as long as sales tax was collected on the sale of the item for which the property was traded-in or, in the case of repossessions, if sales tax was paid on the original purchase of the repossessed property.

This language was deleted in legislation in 1989, so that current law exempts the sale of traded-in and repossessed property from sales tax without regard to any restrictions.

Proposal 7 restores the condition that only the sale of traded-in property in full or partial exchange for merchandise on which sales tax has been paid, and the sale of repossessed property for which sales tax had been collected upon initial sale will be exempt from sales tax.

Section 2 reinstates language regarding the authority of the Department of Revenue to assess unpaid sales taxes against the new owner of a business if that owner has failed to withhold from the amount paid the seller the amount of any sales taxes the seller owes. Before this section of the revenue laws was rewritten in 1991, the base against which sales taxes were assessed was the greater of the amount paid for the business of the fair market value of the business. The 1991 rewrite limited the tax base to the amount paid for the business. The pre-1991 language is reinstated to account for transactions in which the selling price of the business is less than its fair market value.

Effective Date

Section 1 is effective July 1, 1992; Section 2 is effective upon ratification.

Fiscal Effect

The fiscal impact of restricting a current sales tax exemption and increasing the limitation on the value of a business against which unpaid sales taxes can be assessed will have a slightly positive effect on the State General Fund. The impact is unknown due to a lack of aggregate state or national data documenting the total volume and value of articles taken in trade or repossession.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

PROPOSAL 8 (92-LJZ-6(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: ABC Law Changes. (Public)

Sponsors: Representatives Gamble, Colton, Jarrell, Justus, Kerr, Luebke, and Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF BEER A MINI-BREWERY CAN SELL TO CONSUMERS AT THE BREWERY AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE ALCOHOLIC BEVERAGE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101(10) reads as rewritten:

"(10) 'Mixed beverage' means ~~a~~ either of the following:

a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.

b. A premixed cocktail served from a closed package containing only one serving."

Sec. 2. G.S. 18B-404 reads as rewritten:

"**§ 18B-404. Additional provisions for purchase and transportation by mixed beverage permittees.**

(a) Designated Employee. -- A mixed beverages permittee may designate an employee to purchase and transport spirituous liquor as authorized by ~~his~~ the permittee's permit.

(b) Issuance. -- If mixed beverages sales have been approved for an establishment under the last paragraph of G.S. 18B-603(d) or under G.S. 18B-603(e), the purchase-transportation permit for that establishment may be issued by the local board of any city

located in the same county as the establishment, provided the city has approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located.

(c) Designated Store. -- A local board may designate a store within its system to make sales to mixed beverages permittees.

(d) Size of Bottles. -- A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of ~~375~~ 355 milliliter or larger containers. A purchase-transportation permit for a mixed beverages permittee who is also a guest room cabinet permittee may authorize the purchase and transportation of containers in sizes approved by the Commission.

~~(d1) (1) Size of Bottles. -- A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of 375 milliliter or larger containers. A purchase-transportation permit for a mixed beverages permittee who is also a guest room cabinet permittee may authorize the purchase and transportation of containers in sizes approved by the Commission.~~

~~(2) This subsection applies to those counties subject to G.S. 18B-600(f). This subsection also applies to those counties which have a population in excess of 150,000 by the last federal census.~~"

Sec. 3. G.S. 18B-804(b)(9) reads as rewritten:

"(9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities. ~~This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census.~~"

Sec. 4. G.S. 18B-805 reads as rewritten:

"**§ 18B-805. Distribution of revenue.**

(a) Gross Receipts. -- As used in this section, "gross receipts" means all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source.

(b) Primary Distribution. -- Before making any other distribution, a local board shall first pay the following from its gross receipts:

(1) The board shall pay the expenses, including salaries, of operating the local ABC system.

(2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. ~~18B-804(b)(8).~~ 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).

(3) Each month the local board shall pay to the Department of Human Resources five percent (5%) of both the mixed beverages surcharge required by G.S. ~~18B-804(b)(8).~~ 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Human Resources shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.

(4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

(c) Other Statutory Distributions. -- After making the distributions required by subsection (b), a local board shall make the following quarterly distributions from the remaining gross receipts:

(1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (31/2%) markup provided for in G.S. 18B-804(b)(5) and the bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.

(2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision

(1). Notwithstanding the provisions of any local act, this provision shall apply to all local boards.

(3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the board which shall be at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision shall not be applicable to a local board which is subject to a local act setting a different distribution.

(d) Working Capital. -- After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash to operate the ABC system. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.

(e) Other Distributions. -- After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

(f) ~~Mixed Beverage~~ Surcharge Profit Shared. -- When, pursuant to the last paragraph of G.S. 18B-603(d), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

(g) Quarterly Distributions. -- When this section requires a distribution to be made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid to the recipient by the local board within 30 days of the end of that quarter. Adjustments in the amount to be distributed resulting from the closing of the books and from audit shall be made with the next quarterly payment.

(h) Expenditure of Alcoholism Funds. -- Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.

(i) Calculation of Statutory Distributions When Liquor Sold at Less Than Uniform Price. -- If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price."

Sec. 5. G.S. 18B-902(d)(30) reads as rewritten:

"(30) Guest room cabinet permit. -- $750.00. ~~This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census.~~"

Sec. 6. G.S. 18B-903 reads as rewritten:

"**§ 18B-903. Duration of permit; renewal and transfer.**

(a) Duration. -- Once issued, ABC permits shall be valid for the following periods, unless earlier surrendered, suspended or revoked:

(1) On-premises and off-premises malt beverage, unfortified wine, and fortified wine permits;

culinary permits; and all permits listed in G.S. 18B-1100 shall remain valid indefinitely;

(2) Limited special occasion permits shall be valid for 48 hours before and after the occasion for which the permit was issued;

(3) Special one-time permits issued under G.S. 18B-1002 shall be valid for the period stated on the permit;

(4) Temporary permits issued under G.S. 18B-905 shall be valid for 90 days; and

(5) All other ABC permits shall be valid for one year, from May 1 to April 30.

(b) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for ~~a~~ each mixed beverages permit and each guest room cabinet permit shall be five hundred dollars ($500.00). A renewal fee shall not be refundable.

~~(b1) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be five hundred dollars ($500.00). A renewal fee shall not be refundable. This subsection applies to those counties subject to G.S. 18B-600(f). This subsection also applies to those counties which have a population in excess of 150,000 by the last federal census.~~

(c) Change in Ownership. -- All permits for an establishment shall automatically expire and shall be surrendered to the Commission if:

(1) Ownership of the establishment changes; or

(2) There is a change in the membership of the firm, association or partnership owning the establishment, involving the acquisition of a twenty-five percent (25%) or greater share in the firm, association or partnership by someone who did not previously own a twenty-five percent (25%) or greater share; or

(3) Twenty-five percent (25%) or more of the stock of the corporate permittee owning the establishment

is acquired by someone who did not previously own twenty-five percent (25%) or more of the stock.

(d) Change in Management. -- A corporation holding a permit for an establishment for which the manager is required to qualify as an applicant under G.S. 18B-900(c) shall, within 30 days after employing a new manager, submit to the Commission an application for substitution of a manager. The application shall be signed by the new manager, shall be on a form provided by the Commission, and shall be accompanied by a fee of ten dollars ($10.00). The fee shall not be refundable.

(e) Transfer. -- An ABC permit may not be transferred from one person to another or from one location to another.

(f) Lost Permits. -- The Commission may issue duplicate ABC permits for an establishment when the existing valid permits have been lost or damaged. The request for duplicate permits shall be on a form provided by the Commission, certified by the permittee and the Alcohol Law Enforcement Division, and accompanied by a fee of ten dollars ($10.00).

(g) Name Change. -- The Commission may issue new permits to a permittee upon application and payment of a fee of ten dollars ($10.00) for each location when the permittee's name or name of the business is changed."

Sec. 7. G.S. 18B-1001(13) reads as rewritten:

"(13) Guest Room Cabinet Permit. -- A guest room cabinet permit authorizes a hotel having a mixed beverages permit to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A ~~permitee~~ permittee shall provide a reasonable number of vending machines, ~~coolers~~ coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

A guest room cabinet permit may be issued for any of the following:

a. A hotel located in a county ~~This subdivision applies to those counties~~ subject to G.S. 18B-600(f).

b. A hotel located in a county that has ~~This subdivision also applies to those counties which have~~ a population in excess of 150,000 by the last federal census."

Sec. 8. G.S. 18B-1007 reads as rewritten:

"**§ 18B-1007. Additional requirements for mixed beverages permittees.**

(a) Purchases. -- A mixed beverages permittee may purchase spirituous liquor for resale as mixed beverages and a guest room cabinet permittee may purchase spirituous liquor for resale from a guest room cabinet only at an ABC store designated by a local board and only with a purchase-transportation permit issued by that local board under G.S. 18B-403 and 18B-404.

(b) Handling Bottles. -- It shall be unlawful for a mixed beverages permittee or ~~his~~ the permittee's agent or employee to do any of the following:

(1) Store any other spirituous liquor with liquor possessed for resale in mixed ~~beverages;~~

~~(1a) Store any other spirituous liquor with liquor possessed for resale in mixed~~ beverages or from a guest room cabinet. ~~This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census.~~

(2) Refill any spirituous liquor container having a mixed beverages tax stamp with any other alcoholic beverage, or add to the contents of such a container any other alcoholic ~~beverage;~~ beverage.

(3) Transfer from one container to another a mixed beverages tax stamp.

(c) Price List. -- Each mixed beverages permittee shall have available for its customers the printed prices of the most common or popular mixed beverages offered for sale by the permittee. Violation of this subsection shall not be a criminal offense, but shall be punishable under G.S. 18B-104.

(d) When a temporary mixed beverages permit has been issued to a new permittee for the continuation of a business at the same location, the permittee going out of business may sell existing mixed beverages inventory to the new permittee, and the Commission may request that the local ABC board restamp the inventory with the mixed beverages tax stamp assigned by the local board to the new mixed beverages permittee."

Sec. 9. G.S. 18B-1104(7) reads as rewritten:

"(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). This authorization ~~shall apply~~ applies to ~~breweries~~ a brewery that ~~produce~~ sells, to consumers at the brewery, to wholesalers, and to importers, fewer than ~~62,000~~ 310,000 gallons of malt beverages produced by it per year."

Sec. 10. This act is effective upon ratification.

Explanation of Proposal 8

This act makes the following changes to the alcoholic beverage laws, effective upon ratification:

(1) It increases the maximum amount of its beer a mini-brewery may sell each year and still be authorized to sell beer to consumers at the brewery; the increase is from 62,000 gallons a year to 310,000 gallons a year.

(2) It amends the definition of "mixed beverage" to include premixed cocktails served from containers that contain only one serving.

(3) It lowers from 375 milliliters to 355 milliliters the size restriction on containers of spirituous liquor bought from an ABC store by a mixed beverages permit holder for resale as mixed beverages.

(4) It corrects the awkward codification of the laws concerning hotel guest room cabinet permits.

(5) It requires the $20 surcharge on spirituous liquor sold to a guest room cabinet permit holder for resale in a guest room cabinet to be distributed in the same way as the $20 surcharge on spirituous liquor sold to a mixed beverages permit holder for resale as mixed beverages.

In making the first change, the proposal addresses a request from a mini-brewery concerning the sale of beer at the brewery. Current law authorizes a mini-brewery to sell beer to consumers at the brewery if the sale of beer is legal in the place where the brewery is located and the brewery has an on-premises beer permit. By statute, a mini-brewery is a brewery that produces fewer than 62,000 gallons of beer a year. A mini-brewery asked that the current limit on production be changed to a limit on the total amount of its beer the brewery can sell and that the limit be increased five-fold to 310,000 gallons.

Section 9 of this proposal makes the changes requested by the mini-brewery. That section amends G.S. 18B-1104, the statute governing brewery permits, to change the limit on production to a limit on sales and to authorize mini-breweries to sell up to 310,000 gallons of beer produced at the brewery each year. Changing the production limit to a limit on sales will exclude from the computation the amount of beer given away as samples because these free samples are part of the total amount of beer produced but are not part of the total amount sold.

The State has 11 breweries, nine of which are mini-breweries and two of which are not. Of the nine mini-breweries, one is in Manteo, one is in Durham, two are in

Greensboro, three are in Charlotte, one is in Raleigh, and one is in Boone. The other two breweries are a Miller brewery in Eden and a Stroh brewery in Winston-Salem.

In making the last four changes, the proposal addresses problems arising from two acts of the 1991 General Assembly. Chapter 459 of the 1991 Session Laws created the first set of problems, and Chapter 565 of the 1991 Session Laws created the second set of problems.

Among other changes, Chapter 459 of the 1991 Session Laws lowered the size restriction on spirituous liquor bought from an ABC store by a mixed beverages permit holder for resale in mixed beverages from 750 milliliters to 375 milliliters. This change was made to allow a mixed beverages permit holder to buy certain premixed cocktails, such as a Bacardi Breezer or a Jim Beam & Cola, for resale as mixed beverages. The previous threshold of 750 milliliters prohibited the sale of these premixed cocktails as mixed beverages because they were packaged by their manufacturer in 375 milliliter containers.

Although Chapter 459 lowered the size restriction on purchases of spirituous liquor by mixed beverages permit holders, it did not amend the definition of "mixed beverage," thereby creating a conflict. A 375 milliliter premixed cocktail is equivalent to 12.7 ounces and is intended to be a single serving. The term "mixed beverage," however, is defined as a drink served in a quantity that is less than the quantity of its container. Applying this definition, therefore, a mixed beverages permit holder can buy a 375 milliliter premixed cocktail for resale as a mixed beverage but must serve less than the full amount of the cocktail to a customer. To correct this conflict, the bill amends the definition of "mixed beverage" to include a premixed cocktail served from a container that holds only one serving. Section 1 of the proposal makes this change.

In addition to the problem resulting from the definition of "mixed beverage," a change in practice since the enactment of Chapter 459 has created an additional problem. Since that time, one manufacturer of premixed cocktails that were packaged in 375 milliliter cans changed to 355 milliliter cans. As a result, these premixed cocktails can no longer be sold by an ABC store to a mixed beverages permit holder even though the 1991 change was intended to authorize their sale to mixed beverages permit holders. To fulfill the intent of Chapter 459 concerning premixed cocktails, this proposal lowers the 375 milliliter threshold to 355 milliliters, a change of .68 ounces. Section 2 of the proposal, in G.S. 18B-404(d), makes this change.

The immediate effect of this change in the size restriction is to authorize the sale of two premixed cocktails, Jim Beam & Cola and Jim Beam & Ginger Ale, by an ABC

store to a mixed beverages permit holder for resale as mixed beverages. The change does not currently authorize the sale to mixed beverages permit holders of any other additional kind of spirituous liquor because no other spirituous liquor approved for sale by the ABC Commission is packaged in 355 milliliter containers. A 355-milliliter container is unusual because it is not a standard size under the federal ABC laws and therefore can be sold only with express authorization from the federal Bureau of Alcohol, Tobacco, and Firearms. Obviously, however, if other spirituous liquor is packaged in 355 milliliter containers and is approved for sale at ABC stores in this State, the change made by this proposal would enable the spirituous liquor to be purchased by a mixed beverages permit holder.

The second set of problems this proposal addresses was created by Chapter 565 of the 1991 Session Laws. That act authorized certain hotels with mixed beverages permits to obtain hotel guest room cabinet permits and to sell spirituous liquor from cabinets in the hotels' guest rooms. To be eligible for a guest room cabinet permit, a hotel must be located in Moore County or in a county whose population exceeds 150,000.

Because of the location restrictions on eligibility for a guest room cabinet permit, the Revisor of Statutes, in codifying Chapter 565, created separate provisions for hotel guest room cabinet permits rather than integrate the changes in the main body of ABC law. The result is numerous awkward provisions that all repeat the location restrictions. Sections 2, 3, 5, 6, 7, and 8 change the codification of the provisions concerning hotel guest room cabinets to integrate the provisions into the other ABC provisions. These sections, however, do not make any substantive changes in the law.

In addition to creating codification problems, Chapter 565 leaves unanswered a question concerning the $20 surcharge the act imposes on spirituous liquor bought for resale in a hotel guest room cabinet. Because spirituous liquor bought for resale as mixed beverages is subject to a $20 surcharge on each four liters, the act imposes the same surcharge on spirituous liquor bought for resale in a hotel guest room cabinet. The act, however, does not specify how the surcharge on spirituous liquor bought for resale in a hotel guest room cabinet is to be distributed. At the direction of the ABC Commission, the surcharge is currently being distributed the same as the surcharge on spirituous liquor bought for resale as mixed beverages, which is in accordance with the intent of the act.

To answer the question concerning the surcharge, Section 4 of the proposal makes it clear that the $20 surcharge on spirituous liquor sold for resale in a guest room

cabinet is to be distributed in the same way as the $20 surcharge on spirituous liquor sold for resale as mixed beverages. Under that formula, one-half of the surcharge goes to the State's General Fund, five percent of the surcharge goes to the Department of Human Resources for the treatment of alcoholism or substance abuse or for research or education on alcoholism or substance abuse, and the remainder goes to the appropriate local ABC board to be distributed by the local ABC board with other alcoholic beverage revenue.

Proposal 8

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

The alcoholic beverage tax laws are amended by this proposal in the following manner:

1. The maximum amount of beer that mini-breweries can sell at their breweries is increased from 62,000 gallons a year to 310,000 gallons a year
2. The definition of "mixed beverage" is revised to include premixed cocktails served from containers that contain only one serving.
3. The size restriction of 375 milliliters on containers of spiritous liquor bought from an ABC store by a mixed beverage permit holder for resale as mixed beverages is lowered to 355 milliliters.
4. The codification of the laws concerning hotel guest room cabinet permits is corrected.
5. It clarifies that the distribution of the $20 surcharge on spiritous liquor sold for resale in a hotel guest room cabinet shall be the same as the $20 surcharge on spiritous liquor sold for resale as mixed beverages.

   The distribution formula allocates:
   a. One-half of the surcharge to the General Fund,
   b. 5% to DHR for research, education, and treatment surrounding alcoholism or substance abuse, and
   c. The remainder to local ABC boards

Effective Date

Upon ratification

Fiscal Effect

To the extent that mini-breweries increase their production beyond the current cap of 62,000 gallons per year, there will be a slight but insignificant increase in General Fund revenues resulting from alcoholic beverage taxes collected on the increased gallonage. The gain is termed "insignificant" due to the small number of breweries currently operating. According to the ABC Commission, there are only 9 mini-breweries in North Carolina, and in only a few cases is current production at or near the 62,000 gallon cap in the present law.

A General Fund increase of no more than $50,000 is expected in FY93.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 9 (92-LJXZ-5(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Mobile Equipment & Mobile Vehicle Changes. (Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REVISE THE CATEGORY OF SPECIAL MOBILE EQUIPMENT, TO ESTABLISH A UNIFORM REGISTRATION FEE FOR SPECIAL MOBILE EQUIPMENT, TO ALLOW SPECIAL MOBILE EQUIPMENT TO TOW CERTAIN VEHICLES, AND TO MAKE MOBILE CLASSROOMS AND MOBILE OFFICES SUBJECT TO SALES TAX RATHER THAN HIGHWAY USE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01(44) reads as rewritten:

"(44) Special Mobile Equipment. -- ~~Every truck, truck-tractor, industrial truck, trailer, or semitrailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch-digging apparatus, air compressors, electric welders, or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a nonhighway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American Legion or Shrine Temples for parade purposes, trucks or vehicles privately~~

~~owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding, or milling process.~~ Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes."

Sec. 2. G.S. 20-87(10) reads as rewritten:

"(10) Special Mobile Equipment. -- The ~~tax~~ fee for special mobile equipment ~~shall be seven dollars ($7.00)~~ for the license year or any ~~portion thereof; provided, that vehicles on which are permanently mounted feed mixers, grinders and mills and on which are also transported molasses or other similar type feed additives for use in connection with the feed mixing, grinding or milling process shall be taxed an additional sum of thirty-three dollars ($33.00) for the license year or any portion thereof, in addition to the basic four dollars ($4.00) tax provided for herein.~~ part of the license year is the same as the fee in subdivision (5) for a private passenger motor vehicle of not more than fifteen passengers."

Sec. 3. Part 10 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-140.5. Special mobile equipment may tow certain vehicles.

Special mobile equipment may tow any of the following vehicles:

(1) A single passenger vehicle that can carry no more than nine passengers and is not loaded, in whole or in part, with passengers or property.

(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or less and is not loaded, in whole or in part, with passengers or property.

Special mobile equipment may not tow a vehicle that is not listed in this section."

Sec. 4. G.S. 105-164.3(8b) reads as rewritten:

"(8b) 'Motor vehicle' means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

a. A moped as defined in G.S. 20-4.01(27)(d1).

b. Special mobile equipment as defined in G.S. 20-4.01(44).

c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).

d. A farm tractor or other implement of husbandry.

e. A manufactured ~~home.~~ home, a mobile office, or a mobile classroom.

f. Road construction or road maintenance machinery or equipment."

Sec. 5. G.S. 105-164.4(a) is amended by adding the following subdivision to read:

"(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand dollars ($1,000) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article."

Sec. 6. G.S. 105-164.4(a)(1e), as enacted by this act, reads as rewritten:

"(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile

office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ~~($1,000)~~ ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article."

Sec. 7. Section 6 of this act becomes effective July 1, 1993. The remaining sections of this act become effective July 1, 1992.

Explanation of Proposal 9

This proposal addresses two sets of problems concerning vehicles. The first set concerns the registration and taxation of special mobile equipment and the second set concerns the taxation of mobile offices and mobile classrooms. Sections 1 through 3 of the proposal address special mobile equipment and Sections 4 through 6 of the proposal address mobile offices and mobile classrooms. Unless otherwise noted, all the changes made by the proposal are to become effective July 1, 1992.

Special mobile equipment is a class of vehicles; the class consists of vehicles that have permanently attached special equipment whose purpose is to perform off-road work. Truck cranes and well-drilling rigs are two types of special mobile equipment. Because special mobile equipment drives on a road only to get to an off-road job, it is registered and taxed differently from other motor vehicles. The annual registration fee for special mobile equipment is a flat fee of either $7.00 or $37.00 in contrast to the annual registration fee for trucks, which varies based on the weight of the truck and ranges from $21.50 to $923.00. Special mobile equipment is subject to sales tax at the combined State and local rate of 6% rather than the 3%, $1,000 maximum titling tax known as the highway use tax.

The problems with special mobile equipment stem from a combination of quirks in the definition of that class of vehicle and the desire of owners of special mobile equipment to use the equipment in a way that is contrary to the definition. In part, the definition distinguishes between what is and is not special mobile equipment on the basis of irrelevant or changeable factors such as the owner of the vehicle, the former state of the vehicle, and whether the vehicle is rented or leased to another, in which case it is considered "for-hire." This creates problems because two vehicles that are the same end up being treated differently and the same vehicle can be special mobile equipment one day and not the next.

In addition, the definition requires that special mobile equipment not transport persons or property. This restriction has created problems for owners of special mobile equipment, such as large truck cranes, who want to tow a small car or a pick-up truck behind the crane for use at the job site to which the crane is going. The Division of Motor Vehicles of the Department of Transportation has tried to accommodate this desire in the past by changing the registration of the crane from special mobile

equipment to a truck. This change, however, requires the crane's owner to pay the highway use tax, to pay annual registration fees based on weight, and to try to explain to the Department of Revenue why all fuel used by the crane should not be subject to the per gallon excise tax on fuel. It also compounds the problem of having a class of vehicle whose membership can change from day to day.

Legislative Proposal 9 resolves the basic problems with the definition of special mobile equipment by eliminating all the irrelevant or changeable factors in the definition. It eliminates the distinction between for-hire vehicles and not for-hire vehicles so that for-hire vehicles that otherwise meet the definition of special mobile equipment will be considered special mobile equipment. It also removes vehicles that have been converted from some other kind of vehicle into living or office quarters from the class of special mobile equipment so that all mobile homes and all mobile offices will be classified the same. Under the current definition, if a mobile home is converted into a mobile office, it is classified as special mobile equipment, but a mobile office that was built as a mobile office is classified as a trailer. Finally, it allows any vehicle used for parade purposes that has permanently attached special equipment to be classified as special mobile equipment. Under the current definition, this type of vehicle is considered special mobile equipment only if it is owned by the American Legion or a Shrine Temple. Section 1 of the proposal makes these changes.

The proposal accommodates the owners of special mobile equipment who want to tow vehicles behind the special mobile equipment. To do this, it makes two changes. First, it deletes the requirement that special mobile equipment not carry any persons or property and substitutes a requirement that special mobile equipment not be designed or used primarily to transport persons or property. Second, it adds a new statute authorizing special mobile equipment to tow either a single passenger vehicle or a single small truck. Sections 1 and 3 of the proposal make these changes.

The revised definition of special mobile equipment solves the specific problems discussed above and also solves a problem the Division of Motor Vehicles is experiencing concerning the proper classification of mobile playgrounds like the ones used at McDonald's restaurants. Currently, these vehicles do not fit in any category. They are, however, similar to the other types of special mobile equipment; they have permanently attached playground equipment and travel on the road only to get to an off-road site. Section 1 adds these mobile playgrounds to the class of special mobile equipment.

By making the changes described above, the Committee wanted to make it easier to identify special mobile equipment and, consequently, to make it easier for the Division of Motor Vehicles to register special mobile equipment. In reviewing the relevant statutes, the Committee noticed that current law provides two different flat fees for special mobile equipment. A fee of $7.00 applies to all special mobile equipment except feed mixers, grinders, and mills, and a fee of $37.00 applies to feed mixers, grinders, and mills. These fees were last increased in 1983 when they were increased from $4.00 to $7.00 and from $34.00 to $37.00. Before that, the fees had not been increased since 1970, when they were increased from their original $3.00 and $28.00 1953 amounts to $4.00 and $34.00. During that same period passenger vehicle fees increased from $10.00 to $20.00.

The Committee thought the fee for all special mobile equipment ought to be the same and that it should be higher than $7.00. Section 2 of the proposal therefore establishes a uniform registration fee for special mobile equipment and sets the fee at the amount imposed on passenger vehicles of not more than 15 passengers. The current fee for those passenger vehicles is $20.00.

The second set of problems the proposal addresses concerns mobile offices and mobile classrooms. These vehicles are currently subject to the highway use tax instead of sales tax. The highway use tax rate is 3% with a $1,000 cap until July 1, 1993, and 3% with a a $1,500 cap after that. The highway use tax, however, is collected only when a vehicle is titled and many mobile classrooms and mobile offices are not titled. In contrast, manufactured homes are subject to sales tax and are taxed at the preferential rate of 2% with a maximum tax of $300 for each part of the home that is transported separately. Sales tax is collected at the time of the sale rather than a later time.

Sections 4, 5, and 6 of the proposal change the taxation of mobile offices and mobile classrooms to avoid the potential revenue loss that occurs when these vehicles are not titled and to treat them the same as manufactured homes. Section 4 removes mobile offices and mobile classrooms from the definition of "motor vehicle" that is used for sales tax purposes so that they will be subject to sales tax rather than highway use tax. Sections 5 and 6 establish the sales tax rate that applies to mobile offices and mobile classrooms.

The proposal imposes sales tax at the same rate as the highway use tax; therefore, it taxes mobile offices and mobile classrooms at the rate of 3% with a $1,000 cap until July 1, 1993, and at the rate of 3% with a $1,500 cap after that. As with

manufactured homes, each segment of a double-wide mobile office or mobile classroom will be considered a separate item and the maximum tax will apply to each of the segments. Section 5 sets the rate that will apply until July 1, 1993, and Section 6, which does not become effective until July 1, 1993, sets the rate that will apply on or after that date.

Before the enactment of the highway use tax in 1989, manufactured homes, mobile offices, and mobile classrooms were all subject to sales tax at the rate of 2% with a $300 cap on each segment. The highway use tax legislation distinguished between manufactured homes, mobile offices, and mobile classrooms, leaving the first of these three subject to sales tax and making the last two of these subject to highway use tax.

Proposal 9

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

The purpose of this proposal is to resolve current inconsistencies in the statutes pertaining to the registration and taxation of special mobile equipment and in the taxation of mobile offices and mobile classrooms.

Special mobile equipment are vehicles that have machinery permanently attached and use the highways of this State only to move from one nonhighway job to another and not for the transportation of persons or property or for hire. Examples of special mobile equipment are cranes, mills, and well boring and ditch digging apparatus.

Mobile classrooms and offices are currently subject to the highway use tax of 3% with a $1000 cap. However, since this tax is collected when a vehicle is titled, many mobile classrooms and offices are never titled and therefore escape taxation.

This proposal makes the following statutory changes:

1. It authorizes for hire vehicles that otherwise meet the definition of special mobile equipment to register as special mobile equipment
2. It removes reconverted vehicles that now serve as living or office quarters from the definition of special mobile equipment
3. It authorizes any vehicle used for parade purposes that has permanently attached special equipment to be classified as special mobile equipment
4. It establishes a uniform annual registration fee of $20 for special mobile equipment (most now pay $7 or in a very few cases, $37)
5. It imposes sales tax on mobile offices and classrooms at the rate of 3% with a $1000 cap (identical to the highway use tax)

Effective Date:

July 1, 1992

Fiscal Effect

The establishment of a uniform fee for special mobile equipment is expected to increase vehicle registration revenues in the Highway Fund by approximately $27,000. The provision that authorizes the inclusion of for hire vehicles in the definition of special mobile equipment will also have a revenue impact.
The option now exists for these vehicle owners to switch their current registration status from a truck to the special mobile equipment registration classification. Annual registration fees for the heaviest class of truck are $923, compared to annual registration fees for special mobile equipment of $20. How many vehicle owners will opt to change their registration status is unknown at this time. However, it is the opinion of the Division of Motor Vehicles and Fiscal Research that the revenues generated by the new fee provisions and any revenue loss resulting from the expansion of the definition of special mobile equipment will offset each other.

The expected increase in revenues to the State General Fund from the changes in the taxation of mobile offices and mobile classrooms is approximately $300,000 for FY93.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

PROPOSAL 10 (92-LJZ-1(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Clarify Scrap Tire Disposal Tax. (Public)

Sponsors: Representatives Gamble, Colton, Jarrell, Justus, Kerr, Lilley, Luebke, and Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE SCRAP TIRE DISPOSAL TAX DOES NOT APPLY TO NEW TIRES PLACED ON NEWLY MANUFACTURED VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.18 reads as rewritten:

"**§ 105-187.18. Exemptions.**

The taxes imposed by this Article do not apply to:

(1) Bicycle tires and other tires for vehicles propelled by human power.

(2) Recapped tires.

(3) Tires sold for placement on newly manufactured vehicles.

The exemptions in G.S. 105-164.13 and the refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article."

Sec. 2. This act is effective upon ratification and applies retroactively to tires sold on or after July 1, 1991.

Explanation of Proposal 10

This proposal makes it clear that new tires purchased for placement in this State on newly manufactured vehicles are not subject to the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes and were never intended to be subject to the tax. It accomplishes this by creating a specific exemption in G.S. 105-187.18 for these tires and by making the exemption retroactive to the 1991 revision of the scrap tire disposal tax, which appears to include these tires within the scope of the tax.

The scrap tire disposal tax is a 1% tax on the price of certain tires. It was first enacted in 1989 and was revised by Chapter 221 of the 1991 Session Laws. When first enacted, the tax applied only to new motor vehicle tires sold at retail. As revised in 1991, the tax applies, with a few narrow exceptions, to all new vehicle tires sold at retail and to some new vehicle tires sold at wholesale. Ten percent of the revenue from the tax is deposited in the Solid Waste Management Trust Fund and the other ninety percent is distributed to the counties on a per capita basis to be used for the disposal of scrap tires or the abatement of a nuisance caused by storing scrap tires.

Several manufacturers of vehicles, including Freightliner and Caterpillar, brought the need for this clarification to the attention of the Revenue Laws Study Committee. They pointed out that taxing new tires placed on vehicles they manufacture in North Carolina is contrary to the intent of the scrap tire disposal tax and places North Carolina-made vehicles at a competitive disadvantage to vehicles made in other states.

The intent of the scrap tire disposal tax, they explained, is to tax a tire that replaces a tire that is removed from a vehicle and is therefore in need of disposal. Obviously, when a new tire is placed on a newly manufactured vehicle, no tire is being replaced and no tire is in need of disposal.

Payment of the scrap tire disposal tax on tires placed on vehicles manufactured in this State increases the cost of the vehicle. Manufacturers located in other states therefore have a slight cost advantage over North Carolina manufacturers on sales of their vehicles both inside and outside the State. Tires placed on new vehicles made in another state and brought to North Carolina for sale are not subject to the scrap tire disposal tax, but tires placed on new vehicles made in North Carolina and sold in North Carolina are. Similarly, tires placed on new vehicles made in another state and sold in

another state are obviously not subject to the scrap tire disposal tax, but tires placed on new vehicles made in North Carolina and sold in another state are subject to the tax.

In addition to hearing the comments of manufacturers, the Committee reviewed explanations of the 1991 changes to the scrap tire disposal tax that were presented to legislative committees during the 1991 Session and the fiscal notes prepared for the 1991 legislation. The Committee found that the explanations presented to Senate committees listed new tires placed on used vehicles offered for sale or rental as tires that would become subject to tax under the proposed revision but did not list new tires placed on new vehicles offered for sale or rental. The Committee also found that the fiscal notes estimating the revenue increase that would result from the proposed revision did not include any revenue from new tires placed on newly manufactured vehicles.

After discussing the comments and other relevant information, the Committee concluded that the manufacturers were correct in stating that the 1991 revision of the scrap tire disposal tax was not intended to include new tires placed on newly manufactured vehicles. The Committee therefore adopted this proposal to ensure that new tires placed on newly manufactured vehicles are not subject to the scrap tire disposal tax.

Proposal 10

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

The purpose of this proposal is to clarify that new tires purchased for placement in this State on newly manufactured vehicles are exempt from the 1% scrap tire disposal tax. This was legislative intent when revisions to this tax were enacted by the 1991 General Assembly.

Effective Date

Upon ratification and applying retroactively to tires sold on or after July 1, 1991

Fiscal Effect

Currently, it is the position of the North Carolina Department of Revenue that the scrap tire disposal tax does apply to all tires placed on newly manufactured vehicles in North Carolina. Several truck manufacturers located in North Carolina are currently paying this tax under protest.

However, enactment of this proposed legislation would have no impact on the 1992-93 budget. When the scrap tire tax was revised in 1991 to expand the tax base to all new vehicle tires sold at retail and to some new vehicle tires sold at wholesale, revenue from the application of the tax to newly manufactured vehicles was not included in the fiscal estimate.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 11 (92-LJXZ-3(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Fuel Law Changes. (Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT MAKING TECHNICAL AND OTHER CHANGES TO THE FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-430 is amended by adding the following subdivisions to read:

"(5) Person. -- An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.

(6) Secretary. -- The Secretary of Revenue."

Sec. 2. G.S. 105-446.1 reads as rewritten:

"**§ 105-446.1. Refund of tax paid on motor fuel by certain governmental entities and nonprofit organizations.**

(a) A governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. ~~The~~ Any of the following entities may receive a refund under this section:

~~(1) The Department of Transportation;~~

~~(2)~~ (1) A county or a municipal ~~corporation;~~ corporation.

~~(3)~~ (2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local ~~government;~~ government.

~~(4)~~ (3) A volunteer fire ~~department;~~ department.

~~(5)~~ (4) A volunteer rescue ~~squad;~~ squad.

~~(6)~~ (5) A sheltered workshop recognized by the Department of Human Resources.

(b) An application for a refund allowed under this section must be made in accordance with G.S. 105-440 and must be signed by the chief executive officer of the entity. ~~The chief executive officer of the Department of Transportation is the Secretary of Transportation.~~ The chief executive officer of a county or municipal corporation is the officer designated by the governing body of the county or municipal corporation, such as the chair of a board of county commissioners or the mayor of a city. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or by-laws of the organization."

Sec. 3. G.S. 105-442 is repealed.

Sec. 4. G.S. 105-445, as amended by Section 16 of Chapter 538 of the 1991 Session Laws, reads as rewritten:

"**§ 105-445. Application of proceeds of gasoline tax.**

The amount of revenue collected under this Article attributable to a per gallon excise tax of one-half cent (1/2¢) a gallon shall be credited in equal amounts to the Commercial Leaking Petroleum Underground Storage Tank Fund and the Groundwater Protection Loan Fund. Of the remaining tax revenue collected under this Article, seventy-five percent (75%) ~~tax~~ shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Commercial Leaking Petroleum Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway Fund, and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 5. G.S. 105-445, as amended by Section 18 of Chapter 538 of the 1991 Session Laws, reads as rewritten:

"**§ 105-445. Application of proceeds of gasoline tax.**

The amount of revenue collected under this Article attributable to a per gallon excise tax of one-quarter cent (1/4¢) a gallon shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Fund. Of the remaining tax revenue collected under

this Article, seventy-five percent (75%) ~~tax~~ shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Commercial Leaking Petroleum Underground Storage Tank Fund, the Highway Fund, and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 6. G.S. 105-445, as amended by Section 20 of Chapter 538 of the 1991 Session Laws, reads as rewritten:

"**§ 105-445. Application of proceeds of gasoline tax.**

~~Of the revenue collected under this Article, seventy-five~~ Seventy-five percent (75%) ~~tax~~ of the tax revenue collected under this Article shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the the Highway Fund and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 7. G.S. 105-449.26 reads as rewritten:

"**§ 105-449.26. User-sellers and certain suppliers must give receipts for and keep records of fuel sold at retail.**

(a) ~~Receipt.~~ Receipts and Records. -- ~~A~~ When required by this section, a user-seller and a supplier who is also a reseller but is licensed only as a supplier must give a receipt ~~to each person who buys~~ for and keep a record of certain fuel sold at retail from any of the following ~~locations either 25 gallons or more of fuel to propel a motor vehicle or any amount of diesel for any other purpose:~~ locations:

(1) A retail service station or other retail establishment operated by the user-seller or supplier.

(2) A bulk storage facility of the user-seller or supplier to which the buyer came to buy the fuel.

(3) Any other location at which the user-seller or supplier dispenses fuel into a motor vehicle.

If the fuel is sold to propel a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt and must keep a record of any receipt given. If the fuel is diesel and is sold for a purpose other than to propel a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt but must always keep a record of the sale unless subsection (c) exempts the user-seller or supplier from the requirement of keeping a

record. ~~A user-seller or supplier shall prepare only one original receipt for each sale of fuel, shall give the original to the buyer at the time of the sale, and shall keep a copy of the receipt. A user-seller or supplier who gives a person a copy of a receipt shall clearly mark the copy as a duplicate.~~

If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at retail to propel a motor vehicle, the Secretary may require the user-seller or supplier to ~~give a receipt to each person who buys any amount of~~ keep a record of all fuel sold at retail to propel a motor vehicle. A user-seller or supplier who is required to keep a record of diesel sold at retail for a purpose other than to propel a motor vehicle is liable for the tax and the inspection fee on the diesel ~~sold for a purpose other than to propel a motor vehicle~~ if the user-seller or supplier does not ~~have a receipt for~~ keep a record of the ~~diesel sold.~~ sale.

(b) Content. -- A record of a sale and a receipt for a sale shall include all of the following information:

(1) The name and address of the user-seller or supplier.
(2) The name and address of the person buying the fuel.
(3) The date the fuel was sold.
(4) The amount of fuel sold.
(5) The type of fuel sold.
(6) The total sales price of the fuel.
(7) Either of the following:
  a. The company name and company unit number of the motor vehicle into which the fuel was dispensed.
  b. The license plate number of the motor vehicle into which the fuel was dispensed and the state that issued the license plate.
(8) If the fuel is diesel and is sold for a purpose other than to propel a motor vehicle, the type of container or equipment into which the fuel was dispensed.

(c) Exception. -- A user-seller or supplier who sells diesel at a marina from a storage facility whose location makes it improbable that the diesel could be dispensed for a purpose other than to propel a watercraft must keep a record of a sale only if the user-seller or supplier gives the buyer a receipt for the sale."

Sec. 8. G.S. 105-449.37(a) reads as rewritten:

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

(1) Motor carrier. -- ~~Every person, firm, or corporation~~ A person who operates or causes to be operated on any highway in this State a motor vehicle ~~used, designed, or maintained for transportation of persons or property and (i) having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds, (ii) having three or more axles regardless of weight, or (iii) used in combination when the weight of the combination exceeds 26,000 pounds gross vehicle weight.~~ that is a qualified motor vehicle under the International Fuel Tax Agreement. The term does not include the United States, the State, or a political subdivision of the State.

(1a) Motor vehicle. -- A motor vehicle as defined in G.S. ~~20-4.01(23) except that the term does not include~~ 20-4.01(23), other than special mobile equipment as defined in G.S. ~~20-4.01(44) or recreational vehicles.~~ 20-4.01(44).

(2) Operations. -- Operations of all motor vehicles described in subdivision (1), whether loaded or empty and whether or not operated for compensation.

(2a) Person. -- An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.

(3) Secretary. -- The Secretary of Revenue."

Sec. 9. G.S. 105-449.42A(c) reads as rewritten:

"(c) Liability. -- ~~Subsections (a) and (b) govern the primary liability of lessors and lessees of motor vehicles under this Article. Both~~ An independent contractor who leases a motor vehicle to another for fewer than 30 days is liable for compliance with this Article and the person to whom the motor vehicle is leased is not liable. Otherwise, both the lessor and ~~lessee, however,~~ lessee of a motor vehicle are jointly and severally liable for compliance with this Article."

Sec. 10. G.S. 105-449.49 reads as rewritten:

§ 105-449.49. Temporary permits.

Upon application to the Secretary and payment of a fee of ~~twenty-five dollars ($25.00),~~ fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State without registering the vehicle in accordance with G.S. 105-449.47 for not more than 20 days. A

motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the 20-day period. The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

Sec. 11. G.S. 105-449.52(a) reads as rewritten:

"(a) Penalty. -- A motor carrier who operates in this State or causes to be operated in this State a motor vehicle that does not carry the registration card required by this Article or does not display an identification marker in accordance with this Article is subject to a civil penalty of ~~seventy-five dollars ($75.00).~~ one hundred dollars ($100.00). The penalty is payable to the Department of Revenue or the Division of Motor Vehicles. When a motor vehicle is found to be operating without a registration card or an identification marker, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

Sec. 12. G.S. 119-18 reads as rewritten:

"**§ 119-18. Inspection fee; allotments for administration expenses.**

For the purpose of defraying the expenses of enforcing the provisions of this Article there shall be paid to the Secretary of Revenue a charge of one fourth of one cent (1/4 of 1¢) per gallon upon all kerosene and motor fuel. The inspection tax ~~shall be~~ is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax is due and payable under ~~the provisions of G.S. 105-434 to 105-436, and payment shall be made concurrently with payment of said per gallon excise tax, unless the Secretary of Revenue shall by rule and regulation prescribe other methods for the collection of such tax.~~ Articles 36 and 36A of Chapter 105 of the General Statutes. There shall, from time to time, be allotted by the Office of State Budget and Management, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this

section, upon kerosene and motor fuel. Distributors of kerosene licensed under G.S. 119-16.2 shall file reports as required by the Secretary of Revenue, by not later than the twentieth of each month, and remit to the Secretary of Revenue one quarter of a cent (1/4 of 1¢) inspection fee per gallon on all kerosene received during the preceding month."

Sec. 13. Section 5 of this act becomes effective January 1, 1995. Section 6 of this act becomes effective January 1, 1999. Sections 10 and 11 of this act become effective July 1, 1992. The remaining sections of this act are effective upon ratification.

Explanation of Proposal 11

This proposal makes several unrelated substantive changes to the fuel tax laws and also makes several technical changes to these laws. The statutes amended by the proposal are arranged in numerical order for ease of location. Sections 1 through 6 and Section 12 make technical changes, and Sections 7 through 11 make substantive changes. All but one of the substantive changes concern the road tax imposed on motor carriers; the remaining substantive change concerns when a seller of special fuel, which is primarily diesel fuel, must keep a record of and give a receipt for a retail sale of special fuel.

Chapter 441 of the 1991 Session Laws deleted the requirement in former G.S. 105-449.26 that a seller of special fuel keep a record of and give a receipt for each retail sale of the fuel and substituted a requirement that a seller of special fuel keep a record of and give a receipt for all sales of 25 gallons or more of fuel for highway use and for all sales of any amount of fuel for nonhighway use. To keep the type of record and give the type of receipt required, the seller must know the name and address of the person buying the fuel and other information about the buyer.

Even though the 1991 change in G.S. 105-449.26 reduced the circumstances in which a seller of special fuel has to keep a record of and give a receipt for a retail sale of the fuel, many sellers of special fuel continue to report problems with these requirements to the Department of Revenue. First, some sellers report that it is impossible for them to comply with the requirements because many people who buy fuel from them refuse to give the information needed, do not want a receipt for the sale, and are angered by being asked their name, address, and other information.

Second, sellers of special fuel sold at certain marinas for use in watercraft report that the requirements impose needless paperwork on them. They argue that all sales made from pumps located at places like the end of a marina are for the nonhighway use of propelling a watercraft, that the Department of Revenue knows from other reports the amount of fuel that is put into the pump and is dispensed from the pump, and that, therefore, no additional records are needed to ensure that no nontaxpaid fuel is sold for a highway use.

In response to these problems, Section 7 of this proposal makes several changes in the recordkeeping and receipt requirements of G.S. 105-449.26, all of which are effective upon ratification. The section:

(1) Deletes the requirement that a seller keep a record of and give a receipt for all sales of 25 gallons or more of special fuel for highway use and substitutes a requirement that a seller keep a record of and give a receipt for any amount of special fuel sold for highway use when the buyer asks for a receipt.

(2) Deletes the requirement that a seller give a receipt for every sale of any amount of special fuel sold for nonhighway use and, instead, requires a receipt to be given only when requested by the buyer. It retains the requirement that the seller keep a record of all of these sales, however.

(3) Requires a record of and a receipt for a sale of special fuel for nonhighway use to include the type of container or equipment into which the fuel was dispensed.

(4) Requires a seller of special fuel at a marina whose fuel pump is located at a place that makes it improbable that fuel could be dispensed from the pump into a motor vehicle to keep a record of and give a receipt for a sale of fuel only when the buyer asks for a receipt for the sale.

The rest of the substantive changes made by the proposal, which are contained in Sections 8 through 11, affect motor carriers and their liability for the road tax. In general, motor carriers are operators of large trucks and the road tax is a tax on the amount of fuel a motor carrier uses in its operations in this State.

Section 8 changes the definition of motor carrier to conform to proposed changes in the International Fuel Tax Agreement (IFTA). As a result of Chapter 487 of the 1991 Session Laws, North Carolina became a member of the IFTA on January 1, 1992. To join the IFTA, a state must agree to certain uniform provisions. When North Carolina joined the IFTA, the definition of motor carrier in G.S. 105-449.37(a) met the requirements of the IFTA. Because of proposed changes to the IFTA definition of motor carrier, however, the definition of motor carrier in G.S. 105-449.37 will not meet the requirements of the IFTA as of January 1, 1993, unless it is changed.

To solve this immediate problem and any similar problem that may arise in the future, Section 8 ties the definition of motor carrier in State law to the definition used by the IFTA. The immediate effect of this change is to include within the definition of motor carrier a person who operates a combination vehicle whose registered gross vehicle weight exceeds 26,000 pounds. The current law on combination vehicles covers only gross vehicle weight and does not include registered gross vehicle weight. Although the proposed change appears to delete the exception for recreational vehicles, this deletion has no practical effect because recreational vehicles are not qualified motor vehicles under the IFTA. The change in the definition of motor carrier is effective upon ratification.

Section 9 addresses a problem of lessee liability for compliance with the road tax and with other provisions specific to motor carriers. Under current G.S. 105-449.42A(b), a person who leases a motor vehicle from an independent contractor for fewer than 30 days cannot choose to be the motor carrier; the independent contractor is always the motor carrier in that circumstance. Nevertheless, current G.S. 105-449.42A(c) makes the lessee jointly liable with the independent contractor for compliance with the road tax and other motor carrier provisions. The Committee did not think it was fair to hold a person liable for compliance with a law when someone else has the sole legal duty to comply with the law. Therefore, effective upon ratification, Section 9 relieves a lessee of a motor vehicle who legally cannot choose to be the motor carrier with respect to that vehicle from liability for compliance with the motor carrier laws.

Sections 10 and 11 make parallel changes in the amount of the fee charged for a temporary motor carrier permit and the amount of a civil penalty that can be imposed on a motor carrier for operating in this State without proper registration. Section 10 increases the temporary motor carrier permit fee from $25 to $50 and Section 11 increases the civil penalty from $75 to $100, thereby maintaining the current $50 difference between the fee and the penalty. The temporary permit fee has not been increased since it was established in 1982, and the civil penalty has not been increased since 1981, when it was raised from $25 to $75. The increase in the fee and penalty become effective July 1, 1992.

A temporary permit authorizes a motor carrier to operate in the State for 20 days without reporting mileage to the Department of Revenue and paying the road tax based on the number of miles driven. When the current $25 permit fee was set in 1982, the per gallon fuel tax was 12¢ and, consequently, each $25 of road tax liability equalled approximately 208 gallons of fuel and 1,040 miles driven. The per gallon tax is now 22.3¢ and each $25 of road tax liability equals approximately 112 gallons of fuel and 560 miles driven. To put this mileage in context, one round trip up and down I-85 is approximately 468 miles. Thus, the State is losing road tax revenue each time a person with a temporary permit makes two round trips up and down I-85.

Section 10 makes another change designed to avoid a revenue loss through the use of temporary permits. It gives the Secretary of Revenue the authority to refuse to issue a temporary permit to a motor carrier whose road tax registration has been withheld or revoked or who the Secretary finds is evading payment of the road tax through the use of temporary permits.

In addition to the substantive changes described above, the proposal makes a number of technical changes. The technical changes are in Sections 1 through 6 and Section 12. Unless otherwise noted in this explanation, the technical corrections are effective upon ratification.

Section 1 adds standard definitions of "person" and "Secretary" to the gasoline tax article, Article 36 of Chapter 105 of the General Statutes. Section 2 eliminates an unnecessary reference to a gas tax refund for the Department of Transportation. Effective August 1, 1991, all sales of fuel to the Department of Transportation are exempt from the fuel tax under G.S. 105-449A.

Section 3 deletes a section, G.S. 105-442, that is no longer needed because its provisions are either repeated elsewhere in the statutes or are not used. The provisions in G.S. 105-442 on suits for payment of fuel taxes are repeated in 105-239, which is made applicable to the fuel tax laws by G.S. 105-269.3. The provision concerning double liability when a court finds that a person wilfully failed to pay fuel tax has never been used; instead, the general penalties in G.S. 105-236 have been applied. The provision on revocation of a distributor's license is repeated in G.S. 105-441(b). The section also contains cross-references to repealed G.S. 105-436, which would need to be corrected if the statute remained in effect.

Sections 4, 5, and 6 correct redlining errors that caused the word "tax" to be in the wrong place in G.S. 105-445. That statute appears in each of those sections because there are three versions of the section with different effective dates. The effective dates of these technical corrections match the effective dates of the different versions of G.S. 105-445; section 4 is effective upon ratification, Section 5 becomes effective January 1, 1995, and Section 6 becomes effective January 1, 1999.

Section 12 deletes a cross reference to repealed G.S. 105-436 that appears in the statute that imposes a motor fuel inspection fee of 1/4¢ a gallon. It also inserts a reference to the statutes that impose a tax on special fuel as opposed to gasoline.

Proposal 11

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

Please refer to previous explanation of proposed changes prepared by committee counsel.

Effective Date

Fee increases become effective July 1, 1992.

Fiscal Effect

Highway Fund revenues are impacted by the proposed increases in the fee charged for temporary motor carrier permits and in the amount of the civil penalty imposed on a motor carrier found operating in this state without proper registration.

The temporary motor carrier permit fee would increase from $25 to $50, and the civil penalty would be increased from $75 to $100. Highway Fund revenues are expected to increase by approximately $650,000 in FY 93.

Highway Trust Fund revenues are not affected.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 12 (92-LJZ-8(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Tax Appeal Bond Changes. (Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE AMOUNT OF A BOND FILED AS A CONDITION OF APPEALING A TAX DECISION TO COURT IS ADEQUATE TO COVER ANY LIABILITY DETERMINED ON APPEAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-241.3(a) reads as rewritten:

"(a) Any taxpayer aggrieved by the decision of the Tax Review Board may, upon payment of the tax, ~~penalties~~ penalties, and interest asserted to be due or upon filing a bond with the ~~Secretary a bond in such form as the Secretary may prescribe in the amount of said taxes, penalties and interest conditioned on payment of any liability found to be due on an appeal,~~ Secretary, appeal ~~said~~ the decision to the superior court under the provisions of Article 4 of Chapter 150B of the General ~~Statutes; provided, neither~~ Statutes. A bond must be in the form required by the Secretary, be for the amount of taxes, penalties, and interest asserted to be due, and be conditioned on payment of any amount for which the court finds the taxpayer liable. On each appeal to a State court higher than the superior court, a taxpayer who filed a bond with the Secretary when appealing the Tax Review Board's decision to the superior court must, when directed to do so by the Secretary, increase the amount of the bond to cover any increase in the taxpayer's potential liability for taxes, penalties, and interest occurring since the taxpayer

filed the most recent bond. A bond increase required by the Secretary when a taxpayer appeals to a court higher than the superior court is subject to review by the superior court to which the action was first appealed. Neither this section nor the provisions of Article 4 of Chapter 150B ~~shall be construed to~~ prohibit a jeopardy assessment and execution made in accordance with the provisions of G.S. 105-241.2."

Sec. 2. This act becomes effective October 1, 1992, and applies to appeals taken on or after that date.

Explanation of Proposal 12

This proposal addresses a problem brought to the attention of the Revenue Laws Study Committee by the Department of Revenue. It concerns the adequacy of bonds filed by taxpayers as a condition of appealing a decision of the Tax Review Board to superior court. The Tax Review Board is the administrative body that hears appeals from taxpayers who disagree with tax assessments made by the Department of Revenue. If the Tax Review Board decides that a taxpayer owes tax and the taxpayer wants to appeal the decision, the taxpayer can obtain review from the superior court. As a condition of obtaining review by the superior court, however, the taxpayer must either pay the amount of taxes, penalties, and interest the Tax Review Board found the taxpayer owed or file a bond with the Secretary of Revenue in the amount of the taxes, penalties, and interest the Tax Review Board found the taxpayer owed.

Although current law requires a taxpayer to either pay the amount of disputed taxes due or file a bond for the amount of disputed taxes due to be able to seek review in superior court, it does not impose any additional requirements on a taxpayer who then appeals the decision of the superior court to the North Carolina Court of Appeals, the North Carolina Supreme Court, or both. In many of these cases, the taxpayer's liability for the disputed tax continues to increase during the time of an appeal to a higher court and the original bond is inadequate to cover the taxpayer's liability if the State ultimately wins the case. In a recent case, for example, a bond in an amount to cover the taxpayer's liability when an appeal was filed with the superior court was insufficient to protect the State from loss when the case was finally determined in the State's favor by the North Carolina Supreme Court. After the North Carolina Supreme Court decision, the taxpayer declared bankruptcy, which left the State with an unsatisfied judgment of close to $900,000 dollars.

To prevent a similar loss to the State in the future, this proposal gives the Secretary of Revenue the authority to require certain taxpayers who file a bond with the Secretary as a condition of appealing a decision of the Tax Review Board to superior court to file an additional bond with the Secretary upon appealing the superior court's decision to the North Carolina Court of Appeals and upon appealing the Court of Appeals' decision to the North Carolina Supreme Court. The taxpayers who could be required under this proposal to file an additional bond upon appealing a decision of a

superior court to a higher court are those whose liability for the tax that is the subject of the appeal continues to increase during the course of the appeal.

The authority the proposal gives the Secretary of Revenue to require an additional bond upon an appeal to a court higher than the superior court is discretionary and is not required to be exercised in every case. If the Secretary does require an additional bond on appeal to a court higher than the superior court, the proposal makes the amount of the additional bond subject to review by the superior court that first heard the case. The Committee made the amount of an additional bond subject to judicial review to give a taxpayer a forum in which to argue that an additional bond amount is unreasonable. The Committee decided that the superior court was better suited to reviewing an additional bond amount than the higher court to which the taxpayer was appealing.

The proposal becomes effective October 1, 1992. It applies to appeals filed on or after that date.

Proposal 12

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

This proposal gives the Secretary of Revenue the authority to require that an additional bond be posted by taxpayers who appeal tax assessment decisions by the superior court to the North Carolina Court of Appeals, the North Carolina Supreme Court, or both.

Currently, when a taxpayer first appeals the decision of the Tax Review Board to a superior court, the taxpayer must either pay the amount of taxes, penalties, and interest the Tax Review Board determined the taxpayer owed, or the taxpayer must file a bond with the Secretary of Revenue in that same amount. There are no additional requirements on a taxpayer who then appeals the decision of the superior court to the North Carolina Court of Appeals, the North Carolina Supreme Court, or both. When the superior court decision is appealed, often the taxpayer's liability for the disputed tax continues to increase and the original bond is inadequate to cover the taxpayer's total liability should the STate win the case.

The authority granted the Secretary of Revenue by this proposal is discretionary, and it is intended to be exercised to protect the State in cases where substantial amounts of revenue are involved.

Effective Date

October 1, 1992, applying to appeals taken on or after that date.

Fiscal Effect

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 13 (92-LJXZ-12(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Stock Broker Privilege License Tax. (Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CONVERT THE SECURITY DEALER PRIVILEGE LICENSE TAX FROM A TAX BASED ON THE NUMBER OF OFFICES FROM WHICH SECURITIES ARE SOLD TO A TAX ON EACH INDIVIDUAL WHO SELLS SECURITIES, THEREBY TREATING SELLERS OF SECURITIES THE SAME AS OTHER PROFESSIONALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-41(a) reads as rewritten:

"(a) Every practicing attorney-at-law, practicing physician, ~~veterinary,~~ veterinarian, surgeon, osteopath, chiropractor, chiropodist, dentist, oculist, optician, or optometrist, any person practicing any professional art of healing for a fee or reward, every practicing professional engineer as defined in Chapter 89C of the General Statutes, every practicing land surveyor as defined in Chapter 89C of the General Statutes, every securities dealer, as defined in G.S. 78A-2, who is an individual and every securities salesman as defined in G.S. 78A-2, every architect and landscape architect, photographer, canvasser for any photographer, agent of a photographer in transmitting pictures or photographs to be copied, ~~enlarged or colored~~ enlarged, or colored, ~~(including all persons enumerated in this section employed by the State, county, municipality, a corporation, firm or individual),~~ and every person, whether acting as an individual, as a member of a partnership, or as an officer ~~and/or~~ or agent of a corporation, who is engaged in the

business of selling or offering ~~for sale,~~ to sell real estate, buying or offering to ~~buy,~~ buy real estate, negotiating the purchase, sale, or exchange of real estate, ~~or who is engaged in the business of~~ leasing or offering to ~~lease,~~ lease real estate, renting or offering to ~~rent, or of~~ rent real estate, collecting any rents as agent for another for compensation, or ~~who is engaged in the business of~~ soliciting ~~and/or~~ or negotiating loans on real estate as agent for another for a commission, ~~brokerage and/or~~ brokerage, or other ~~compensation,~~ compensation shall apply for and obtain from the Secretary ~~of Revenue~~ a statewide license for the privilege of engaging in ~~such business or profession, or the doing of the act named,~~ the profession, business, or act and shall pay ~~for such license~~ a tax of fifty dollars ~~($50.00);~~ ($50.00) for the license. Provided, that no professional man or woman shall be required to pay a privilege tax after he or she has arrived at the age of 75 years. ~~Further provided, that it~~

It shall be unlawful for a nonresident of this State to engage in the real estate business in this State, as defined in this section, unless the State of residence of such person will permit a resident of this State to engage in such business. Any person who shall engage in the real estate business in this State in violation of the terms of this provision shall be guilty of a misdemeanor and shall be punished in the discretion of the court; and further provided, that the obtaining of a real estate dealer's license by such person shall not authorize such nonresident to engage in the real estate business in this State, and provided further that in all prosecutions under this section, a certificate under the hand and seal of the Secretary ~~of Revenue~~ that the accused filed no income tax returns with ~~his department~~ the Department of Revenue for the preceding taxable year shall be **prima facie** evidence that the accused is a nonresident and that ~~his~~ the accused's license is void."

Sec. 2. G.S. 105-67 is repealed.

Sec. 3. G.S. 105-83 reads as rewritten:

"**§ 105-83. Installment paper dealers.**

(a) Every ~~person, firm, or corporation, foreign or domestic,~~ person engaged in the business of dealing in, buying, ~~and/or~~ or discounting installment paper, notes, bonds, contracts, or evidences of ~~debt and/or other securities,~~ debt, where at the time of or in connection with the execution of said instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of such obligations, shall apply for and obtain from the Secretary ~~of Revenue~~ a State license for the privilege of engaging in such business or for the purchasing

of such obligations in this State, and shall pay for such license an annual tax of one hundred dollars ($100.00).

(b) In addition to obtaining a State license from the Secretary, each person subject to the tax levied in subsection (a) ~~of this section, such person, firm, or corporation~~ shall submit to the ~~Revenue~~ Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the ~~said~~ Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making ~~such~~ the statement, of the total face value of the installment paper, notes, bonds, contracts, and evidences of ~~debt, and/or other securities described in this section~~ debt dealt in, ~~bought and/or~~ bought, or discounted within the preceding three calendar months and, at the same time, shall pay a tax of two hundred and seventy-five thousandths of one percent (.275%) of the face value of ~~such obligations dealt in, bought and/or discounted for such period.~~ these obligations.

(c) If any ~~person, firm, or corporation, foreign or domestic, shall deal~~ person deals in, ~~buy and/or discount~~ buys, or discounts any ~~such paper, notes, bonds, contracts, evidences of debt and/or other securities~~ obligations described in this section without ~~applying for and~~ obtaining ~~a~~ the license ~~for the privilege of engaging in such business of dealing in such obligations, or shall fail, refuse, or neglect to pay the taxes levied in this section, such obligation shall not be recoverable or the collection thereof enforceable at law or by suit in equity in any of the courts of this State until and when the license taxes prescribed in this section have been paid, together with any and all penalties prescribed in this Article for the nonpayment of taxes.~~ required by this section or paying a tax imposed by this section, the person may not bring an action in a State court to enforce collection of an obligation dealt in, bought, or discounted during the period of noncompliance with this section until the person obtains the license and pays the amount of tax, penalties, and interest due.

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

(e) Counties, ~~cities~~ cities, and towns shall not levy any license tax on the business taxed under this section."

Sec. 4. This act becomes effective July 1, 1992.

Explanation of Proposal 13

As its title indicates, this proposal repeals the current privilege license tax on securities dealers and replaces it with a privilege license tax on individual stock brokers and other individual securities agents. In making this substantive change, the proposal also makes a number of technical changes to the affected statutes. The proposal is to become effective July 1, 1992.

The current privilege license tax on securities dealers, imposed by G.S. 105-67, taxes the entity that is registered as a securities dealer with the Secretary of State under G.S. 78A-2. The entity can be an individual, a partnership, or a corporation. The current tax on a securities dealer is either $200 or $450 for each office location of the dealer. The tax is $200 for a location that does not have a wire service that provides stock price quotes and is $450 for each location that has a wire service that provides stock price quotes.

The Department of Revenue pointed out that a significant inequity results from the imposition of the tax on the basis of the number of office locations rather than the volume of business or number of agents. A dealer, for example, who has one agent in five offices located throughout the State pays five times as much tax as a dealer who has one office but who has 25 agents working in that office. Insurance companies, in particular, are affected by this inequity because they frequently have agents in offices throughout the State and many agents are authorized to sell mutual funds, which are a type of security. The insurance company is therefore liable for the securities dealer privilege license tax based on each office that has an agent who sells mutual funds.

To correct this inequity, the Revenue Laws Study Committee recommends repealing the current tax, which is based on the number of a dealer's offices, and replacing that tax with a tax of $50.00 on each individual stock broker or other individual securities agent. By making this change, stock brokers and other securities agents would be subject to the same privilege license tax as doctors, lawyers, architects, real estate brokers, and numerous other professionals. These professionals pay an annual privilege license tax of $50.00.

Sections 1 and 2 of the bill make the changes discussed. Section 1 adds individual stock brokers and other individual securities agents to the list of professionals in G.S.

105-41(a) that must pay an annual privilege license tax of $50.00. Section 2 repeals the current privilege license tax on securities dealers. A privilege license tax has been imposed on securities dealers since at least 1909, when the tax was $50.00.

The proposal, in Sections 1 and 3, also makes technical changes. Section 1 makes technical changes to G.S. 105-41(a) to correct grammatical problems and to delete a phrase concerning employees that contradicts the long-standing interpretation and administrative enforcement of the subsection by the Attorney General's Office and the Department of Revenue. The deleted phrase suggests that employees of the State or any other employer are subject to the privilege license tax imposed by the statute. The key, however, to determining whether an individual is subject to the tax is not whether the individual is employed by another but whether the individual is considered to practice a taxed profession. A person is not considered to practice a profession unless the person receives compensation from a fund or pool of income derived in part or in whole from fees charged by the person for services rendered. Thus, the deleted phrase is irrelevant to a determination of tax liability under the statute and is confusing in suggesting that all employees are subject to the tax.

Section 3 makes technical changes to G.S. 105-83, which imposes a privilege license tax on dealers in secured notes and other commercial paper. The section deletes references in that statute to securities because the references are misleading. The tax in G.S. 105-83 has nothing to do with securities; it applies to certain secured obligations.

Proposal 13

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

The proposal repeals the privilege license tax on securities dealers and replaces it with a privilege license tax on individual stock brokers and other securities agents.

Current law levies a license tax on securities dealers, defined as "any person engaged in the business of effecting transactions in securities for the account of others or his own account"", but not including salesmen, banks and other savings institutions, and persons who deal directly with securities issuers or deal indirectly through banks or insurance companies. Under the North Carolina Securities Act (G.S. 78A-2), the word "person" in the previous definition of securities dealers can mean an individual, a corporation, or a partnership.

The current tax rate is either $450 for each dealer office location with a wire service that provides stock price quotes, or $200 for each location without one.
In place of the current privilege license tax on securities dealers, this proposal would levy a $50 annual privilege license tax on individual stock brokers and securities agents. This change puts stock brokers into the category of professionals such as doctors, lawyers, architects, and real estate brokers who are now subject to an annual $50 privilege license tax.

Effective Date

July 1, 1992

Fiscal Effect

According to the Secretary of State's office, there are 166 securities dealers and approximately 7,500 securities salesmen transacting business in North Carolina.

I am assuming there will be some percentage of salesmen who elect not to purchase an individual license because of a low probability of its use during the next year. Therefore, if 7,000 individual dealers and salesmen purchase a $50 privilege license in FY93, the revenues generated would amount to $350,000.

Revenue collections for FY91 for the current securities dealers privilege license tax were $381,405. However, this figure is significantly higher than FY90 collections of $168,275. In FY91, a number of assessments of penalties, interest, and back taxes were made through increased audit activity of this tax.
Given the previous information, the revenue impact from this proposal is revenue neutral.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 14 (92-LJZ-7(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: License, Excise Tax Technical Changes. (Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT MAKING TECHNICAL AND ADMINISTRATIVE CHANGES TO THE LICENSE AND EXCISE TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-65.1(b)(1) reads as rewritten:

"(1) In addition to the license tax imposed under subsection (a), a distributor or operator of soft drink dispensers, except open cup drink dispensers, shall annually pay to the Secretary of Revenue a soft drink dispenser tax in an amount based on the number of dispensers operated, ~~maintained~~ maintained, or placed on location by the distributor or operator on July 1 of the license year. The amount of tax due is as follows:

Number of Dispensers	Amount of Tax
~~5-50~~ 1-50	$ 7.00 per dispenser
51-100	535.00
101-150	892.50
151-200	1,250.00
200 and up	1,250.00 plus $357.50 for each additional 50 dispensers or fraction thereof

A distributor or operator who was not in business on July 1 of the license year shall pay a tax based

on the number of dispensers ~~he~~ the distributor or operator reasonably expects to operate, ~~maintain~~ maintain, or place on location during the ensuing license year. If the number of dispensers operated, ~~maintained~~ maintained, or placed on location during that year exceeds the distributor's or operator's estimate, the distributor or operator shall, within 20 days of the close of the license year, report the excess to the Secretary and pay any additional tax due according to the above table."

Sec. 2. G.S. 105-85(b)(1) reads as rewritten:

"(1) Laundry. -- A business where steam, electricity, or other power is used to clean fabric, including a wet or damp wash laundry, a launderette, a launderall, or a similar business. The term "launderettes and launderalls" means commercial establishments in which automatic washing machines and dryers are installed for the use of individual customers, including those that contain coin-operated or coin-activated washing machines; however, the term does not include an apartment ~~buildings~~ building in which these machines are provided by the apartment building owner or manager for the exclusive use and convenience of tenants of the ~~buildings.~~ building."

Sec. 3. Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.4A. Licenses.**

(a) General. -- To obtain a license required by this Article, an applicant must apply to the Secretary and pay the tax due for the license. A license is not transferable or assignable and must be displayed at the place of business for which it is issued.

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

(c) Duplicate or Amended License. -- Upon application to the Secretary, a license holder may obtain without charge one of the following:

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

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

A duplicate or amended license shall state that it is a duplicate or amended license, as appropriate."

Sec. 4. G.S. 105-113.12 reads as rewritten:

"**§ 105-113.12. ~~Distributors'~~ Distributor must obtain license.**

(a) ~~Distributors shall obtain, for each place of business, a continuing license, for which a fee~~ A distributor shall obtain for each place of business a continuing distributor's license and shall pay a tax of twenty-five dollars ($25.00) ~~shall be paid~~ for the license.

(b) For the purposes of this section, "place of business" means any place where unstamped packages of cigarettes are received or stored by a distributor for the purposes of affixing stamps thereto, and any place where a distributor actually affixes stamps to unstamped packages of cigarettes.

(c) ~~Out-of-state distributors~~ An out-of-state distributor may obtain ~~appropriate distributors' licenses~~ a distributor's license upon compliance with the provisions of G.S. ~~105-113.24, for which a fee~~ 105-113.24 and payment of a tax of twenty-five dollars ~~($25.00) shall be paid for each such license.~~ ($25.00)."

Sec. 5. G.S. 105-113.13 reads as rewritten:

"**§ 105-113.13. ~~Issuance of licenses.~~ Secretary may investigate applicant for distributor's license and require a bond.**

~~(a) All licenses shall be issued by the Secretary.~~

~~(b) No license shall be issued to a distributor except upon payment of the full fee therefor.~~

~~(c) Prior to the issuance of any license under this Article, the Secretary may cause to be made such investigation as he deems necessary respecting the eligibility of the applicant to receive such license and the accuracy of the information contained in the application therefor. The Secretary may refrain from the issuance of a license where he has reasonable cause to believe that the applicant has wilfully withheld information requested by him for the purpose of determining the eligibility of the applicant to receive a license or where he has reasonable cause to believe that the information submitted in the application is false or misleading and is not made in good faith.~~

~~(d) When the Secretary deems it necessary to the proper administration of this Article, he may require any distributor upon application for a license to file with him a bond payable to the State of North Carolina in such amount and upon such~~

~~conditions as in the opinion of the Secretary will guarantee the performance of the duties and the discharge of the liabilities of said distributor under this Article. Such bond shall be executed by the distributor as principal and by an indemnity company licensed to do business under the insurance laws of this State as surety.~~

~~(e) No license shall be assignable or transferable.~~

(a) Investigation. -- The Secretary may investigate an applicant for a distributor's license to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed as a distributor. The Secretary may decline to issue a distributor's license to an applicant when the Secretary has reasonable cause to believe any of the following:

(1) That the applicant has wilfully withheld information requested by the Secretary for the purpose of determining the applicant's eligibility for the license.

(2) That information submitted with the application is false or misleading.

(3) That the application is not made in good faith.

(b) Bond. -- The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. A bond shall be executed by the distributor as principal and by an indemnity company licensed to do business under the insurance laws of this State as surety."

Sec. 6. G.S. 105-113.14 and G.S. 105-113.15 are repealed.

Sec. 7. G.S. 105-113.16(e) reads as rewritten:

"(e) If any person licensed under the provisions of G.S. 105-65.1, ~~105-84,~~ 105-102.5(b)(7), 105-164.4, 105-164.5, ~~105-164.6 and~~ 105-164.6, or 105-164.29 ~~shall be~~ is convicted ~~by any court of competent jurisdiction in this State~~ of any offense under this Article, the Secretary ~~is authorized to~~ may revoke any or all licenses issued to ~~such~~ the person under ~~the provisions of the aforesaid sections of Chapter 105 of the General Statutes.~~ these statutes. The provisions of subsection (b) ~~above relative to~~ concerning notice, hearing, ~~review~~ review, and appeal ~~shall~~ apply to ~~this subsection (e).~~ a revocation of a license under this subsection."

Sec. 8. G.S. 105-113.17 reads as rewritten:

"**§ 105-113.17. ~~Exhibit of license; identification~~ Identification of dispensers.**

~~(a) Each license, or certificate thereof, or such other evidence of license as the Secretary may authorize, shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the Secretary.~~

~~(b) Every vending machine which dispenses cigarettes shall be identified as to ownership in such manner as the Secretary may prescribe.~~

Each vending machine that dispenses cigarettes must be marked to identify its owner in the manner required by the Secretary."

Sec. 9. G.S. 105-113.24(b) reads as rewritten:

"(b) ~~Any such~~ A nonresident distributor ~~shall be required to~~ must agree to submit ~~his~~ the distributor's books, accounts, and records to reasonable examination by the Secretary or ~~his~~ the Secretary's duly authorized agents. ~~Each such nonresident distributor shall file with the Secretary a performance bond fulfilling the terms and conditions set forth with respect to bonds in subsection (d) of~~ The Secretary may require a nonresident distributor to file a bond in accordance with G.S. 105-113.13."

Sec. 10. G.S. 105-113.35 is amended by adding a new subsection to read:

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

Sec. 11. G.S. 105-113.36 reads as rewritten:

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

A wholesale dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of twenty-five dollars ($25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco products license and shall pay a ~~fee~~ tax of ten dollars ($10.00) for the license. A "place of business" is a place where a wholesale dealer or where a retail dealer makes tobacco products other than cigarettes or a wholesale dealer or a retail dealer

receives or stores non-tax-paid tobacco products other than cigarettes."

Sec. 12. G.S. 105-113.37(c) is repealed.

Sec. 13. G.S. 105-113.44(6) reads as rewritten:

"(6) Natural. -- Without added ingredients of any kind other than ~~vitamins.~~ vitamins, minerals, or ingredients extracted from an item and later returned to the item during the manufacturing process. Added ingredients include sugar, salt, preservatives, ~~artificial flavoring,~~ coloring, ~~and carbonation.~~ carbonation, and artificial flavoring."

Sec. 14. G.S. 105-113.45 reads as rewritten:

"**§ 105-113.45. Excise taxes on soft drinks and base products.**

(a) Bottled Soft Drinks. -- An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. -- An excise tax of one dollar ($1.00) a gallon, or four-fifths of a cent (4/5¢) an ounce or a fraction of an ounce, is levied on a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. -- An excise tax is levied on a dry base product at the rate:

(1) Of one cent (1¢) an ounce or a fraction of an ounce if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

Sec. 15. G.S. 105-113.46(9) reads as rewritten:

"(9) A base product for domestic ~~use, except a base product that does not contain any milk and to which a liquid other than milk is added to make a soft drink.~~ use that either contains milk or, according to directions on the base product's container, requires milk to be added to make a soft drink."

Sec. 16. G.S. 105-113.51(e) is repealed.

Sec. 17. This act is effective upon ratification.

Explanation of Proposal 14

This proposal makes a number of technical and administrative changes to the license and excise tax statutes. The proposal arranges the affected statutes in numerical order for ease of location. Every proposed change, except those made by Sections 1 and 7 of the bill, stems from changes made to the license and excise tax statutes by 1991 legislation. All the changes made by the proposal are to become effective upon ratification.

Section 1 of the bill changes the designation of the lowest bracket of the closed container soft drink dispenser tax from "5-50 dispensers" to "1-50 dispensers" to make it clear that the tax applies to all dispensers of an operator and not just those over the first four. To be an operator of closed container soft drink dispensing machines, a person must have at least five dispensers. The operator must pay an annual privilege license tax of $100 plus an extra amount based on the number of dispensers the operator has. Despite the lowest bracket designation in the table in G.S. 105-65.1(b), the extra amount an operator pays for each dispenser is and always has been construed to include every dispenser of the operator and not just those over the first four. Therefore, an operator of six dispensers owes tax of $42 ($7 x 6) rather than $14 ($7 x (6-4)).

Section 2 makes it clear that the laundry privilege license tax imposed by G.S. 105-85 applies to a person who provides washing machines and dryers in an apartment building unless the person is the owner or manager of the apartment building. Chapter 479 of the 1991 Session Laws revised the laundry privilege license tax to set two uniform tax rates, one of which applies to laundries that do not have vehicles that drive around and pick up laundry and one of which applies to laundries that have vehicles that drive around and pick up laundry. In making the changes, a former limitation of the apartment building exemption to the owner or manager of the apartment building was inadvertently omitted. This section reinserts that restriction and brings the statute into conformance with its continued administrative interpretation.

Sections 3 through 12 change the tobacco products excise taxes primarily to make certain provisions that apply to licenses issued to cigarette distributors and to collection of the cigarette excise tax also apply to licenses issued to wholesale dealers and retail

dealers of other tobacco products and to collection of the excise tax on other tobacco products. These sections also make technical changes.

Section 3 moves general provisions about the issuance of a license to distribute cigarettes from Part 2 of Article 2A, the tobacco products excise tax article, to Part 1 of that Article so that the provisions apply to licenses issued to wholesale and retail dealers of tobacco products other than cigarettes in addition to distributors of cigarettes. These provisions require licenses to be issued by the Secretary of Revenue, require payment of the license tax before a license is issued, require a license to be posted at the appropriate place of business, specify that a refund of a license tax is allowed only when the tax was collected or paid in error, and specify the procedure for obtaining a duplicate or amended license.

Sections 4 and 11 change the word "fee" in G.S. 105-113.12 and G.S. 105-113.36, respectively, to "tax" to make consistent the language used throughout Article 2A to refer to the payment for a license. New G.S. 105-113.4A, added by Section 3 of the proposal, and the first sentence of G.S. 105-113.36 use the word "tax" and the other statutes currently use the word "fee."

Sections 5, 6, and 8 delete the license provisions from Part 2 of Article 2A that are moved by Section 3 to Part 1 and reformat the remaining provisions in the affected sections of Part 2. The remaining provisions are reformatted to make them more readable and do not make substantive changes.

Sections 7 and 9 delete incorrect cross references in the tobacco tax statutes. Section 7 deletes an incorrect reference in G.S. 105-113.16(e) to G.S. 105-84, which was repealed by Chapter 150 of the 1979 Session Laws and replaced by G.S. 105-102.5(b)(7). Section 9 deletes an incorrect cross reference in G.S. 105-113.24(b) to G.S. 105-113.13(d), which is reformatted by Section 5 of this act as G.S. 105-113.13(b).

Section 10 extends a provision that applies to manufacturers of cigarettes to manufacturers of tobacco products other than cigarettes. It allows manufacturers of tobacco products other than cigarettes to apply to the Secretary for permission to be exempt from paying the excise tax on sales to wholesale and retail dealers, the result being that the tax would be paid by the wholesale or retail dealer.

Section 12 deletes an unnecessary refund provision that has created confusion among some taxpayers and is contrary to the designated sale procedures. The designated sale procedure in G.S. 105-113.37 is intended to be the mechanism for avoiding payment of the tobacco products excise tax on the sale of products to which

the tax does not apply. Some taxpayers have argued that the designated sale procedure is optional and that the taxpayer can simply file for a refund rather than follow these procedures. The existence of a reference to a refund in subsection (c) of that section bolsters their argument. That subsection, however, was intended merely as a cross reference to the general refund provisions in Article 9 of Chapter 105 and not as a substitute method. Repeal of the provision does not change the general law in Article 9, but removes the appearance in G.S. 105-113.37 that the designated sale procedure is optional.

Sections 13 through 16 amend the soft drink excise tax statutes, which were extensively revised by Chapter 689 of the 1991 Session Laws. Section 13 slightly expands the definition of "natural" to allow a beverage to still be considered natural if it has added minerals, such as iron or calcium, or added extracted ingredients, such as essence. Current law provides that beverages with added ingredients other than vitamins are not considered natural. Section 14 corrects a grammatical error. Section 15 rewrites the exemption for certain base products for domestic use to make it more understandable but to make no substantive change. The exemption is currently written in the negative and is hard to understand. Section 16 deletes a refund provision in the soft drink excise tax statutes that parallels the provision in the tobacco excise tax statutes that is repealed by Section 12 of this proposal. The soft drink refund provision is deleted for the same reasons as the tobacco tax provision.

Proposal 14

Fiscal Report
Fiscal Research Division
April 6, 1992

Summary of Proposal

Please refer to the previous explanation of proposed changes to the privilege license and other excise taxes prepared by committee counsel.

Effective Date:

Upon ratification

Fiscal Effect

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

PROPOSAL 15 (92-LJZ-10(2.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Allowance for Remitting Stamp Tax. (Public)

Sponsors: Representatives Gamble; Colton, Jarrell, Justus, Kerr, Lilley, Luebke, and Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE AUTHORITY OF COUNTIES TO RETAIN THEIR COSTS IN COLLECTING THE STATE'S SHARE OF THE DEED STAMP TAX WITH THE AUTHORITY TO RETAIN A FIXED PERCENTAGE OF THE REVENUE FROM THAT TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county shall remit the ~~net~~ proceeds of the tax levied by this section to the county finance officer on a monthly basis. The finance officer of each county shall credit one-half of the proceeds to the county's general fund and shall remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, ~~shall distribute the tax proceeds on a monthly basis as follows: one-half of the net proceeds shall be retained by the county and placed in its general fund and one-half of the net proceeds shall be remitted~~ to the Department of Revenue. A county may retain seven-tenths of one percent (7/10 of 1%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue shall credit fifteen percent (15%) to the Recreation and Natural Heritage Trust Fund

established under G.S. 113-77.7 and the remainder to the General Fund. ~~As used in this subsection, the term "net proceeds" means gross proceeds less the cost to the county of collecting and administering the tax.~~"

Sec. 2. This act becomes effective July 1, 1992, and applies to taxes collected on or after that date.

Explanation of Proposal 15

This proposal results from a problem created by the 1991 changes to the excise tax on instruments transferring real property. Chapter 689 of the 1991 Session Laws changed this excise tax, known as the deed stamp tax, in three ways. It doubled the tax rate from 50¢ for each $500.00 of value to $1.00 for each $500.00 of value, expanded the tax base by removing the deduction for the value of an assumed lien, and directed each county to remit one-half of the net proceeds of the tax to the Department of Revenue, which must credit 15% of the remitted amount to the Recreation and Natural Heritage Trust Fund and the remaining 85% to the General Fund.

The change creating the problem addressed by this proposal is the direction to the counties to remit one-half of the net proceeds of the tax to the Department of Revenue. Before the 1991 change, each county collected the tax and kept all the proceeds of the tax. Since the 1991 change, each county continues to collect the tax but keeps only one-half of the net proceeds of the tax. G.S. 105-228.30(b) defines "net proceeds" as gross tax proceeds less the cost to the county of "collecting and administering the tax," as determined by the county register of deeds.

The registers of deeds have interpreted this allowance for the cost of collection and administration in various ways and, consequently, have kept widely differing percentages of the gross proceeds of the tax as the cost of collection and administration. The percentage of gross proceeds retained varies from 0% to 91%. Seven counties, Ashe, Craven, Davidson, Gates, Pasquotank, Perquimans, and Wake, retain nothing; 33 counties retain no more than 5%; 25 counties retain from 5% to 10%; 15 counties retain from 10% to 20%; and the remaining 20 counties retain more than 20%.

These different percentages reflect the different methods used for calculating the costs of collection and administration. The counties that retain nothing reason that the county was collecting the tax anyway and that the cost to write a monthly check to the State and complete the one-page form that must be sent to the Department of Revenue with the check is negligible. Some counties use a flat percentage as a guess of what the costs are. Some counties calculate an average cost of all documents recorded at the register of deeds office and some calculate an average cost of only instruments that are subject to the deed stamp tax.

The Revenue Laws Study Committee examined the amounts retained by counties, the extra burden placed on counties, and the legislative intent of the allowance for the costs of collection and administration. The Committee found that the additional burden to the counties consists of filling out a one-page form each month with information the counties would have gathered anyway, subtracting the costs of collection from total collections to arrive at net proceeds, and writing a check to the Department of Revenue for one-half of the net proceeds.

The Committee debated whether the General Assembly intended for the State to share in the total costs of collecting the deed stamp tax or only in the incremental costs of collecting the State's share. The Committee concluded that the General Assembly intended the counties to be reimbursed only for the incremental costs in collecting and remitting the State's share. Given this premise, the Committee then discussed the appropriate amount of reimbursement and decided that seven tenths of one percent is a fair amount. The Committee settled on this amount because it is the same percentage the State retains from local sales and use taxes as reimbursement for the State's cost in collecting and administering the local sales and use taxes.

This proposal contains the Committee's recommendations on the allowance for collecting and remitting the State's share of the deed stamp tax. It establishes seven-tenths of one percent as the amount that may be retained as an allowance for administrative costs and makes it clear that the allowance is compensation for the county's incremental cost in collecting the State's share of the tax rather than compensation for part of the total costs of collecting the deed stamp tax. The change in the amount that can be retained as an allowance for administrative costs is effective for taxes collected on or after July 1, 1992.

Proposal 15

Fiscal Report
Fiscal Research Division
April 17, 1992

Summary of Proposal

The proposal limits the amount of administrative costs that Register of Deeds offices can deduct from the state portion of the real estate conveyance tax to seven-tenths of one percent (.007). This ratio is identical to what is retained by the Department of Revenue for administrative costs for collecting and distributing revenues from the local retail sales taxes.

Background Information

Part of the 1991 revenue package was a new state real estate conveyance tax that piggybacks the local conveyance tax. The local tax is $.50 per $500 of value and is collected by the county Register of Deeds office. Until August 1, 1991, all funds from this tax had been deposited in the county general fund.

The state tax is also $.50 per $500, for a combined rate of $1.00 per $500. The Register of Deeds office collects both local and state share, and is required, after deducting any costs of collection, to transfer the net proceeds on a monthly basis to the county finance officer who sends one-half to the Department of Revenue.

It was legislative intent to allow a deduction for administrative expenses for any additional costs related to collection of the new state tax. These costs were expected to involve nothing more than the filing of a monthly report and the cutting of a check.

This is not how the Register of Deeds Association has interpreted the language in the appropriation bill. Their interpretation is that the law requires them to deduct expenses based on *both* the new state tax and the existing local tax; in other words, they believe the law allows them to deduct all expenses related to collection of the conveyance tax by their office, including salaries, benefits, and office overhead.

Based on information provided by the Department of Revenue for the first five months of collection at the new rate, Register of Deeds offices across the state have retained $772,000 in administrative costs. Projecting through the rest of the fiscal year, this amount will double to $1.5 million (if real estate sales improve noticeably that amount will be even higher).

Effective Date

July 1, 1992

Fiscal Impact

Assuming the State will collect $12 million from the state land transfer tax in FY 93, all Register of Deeds offices statewide will retain approximately $84,000 for defraying administrative costs. Compared to the $750,000 to $1 million expected to be retained by Register of Deeds offices in the current fiscal year, the State General Fund will experience a gain in FY 93 of at least $666,000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S D

PROPOSAL 16 (91-LC-303(1.10)Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Electronic Funds Transfer. (Public)

Sponsors: Senators Winner; Carter, Plexico, Seymour, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER AND TO APPROPRIATE FUNDS FOR AUTOMATION NECESSARY TO IMPLEMENT THE ELECTRONIC FUNDS TRANSFER PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 105 of the General Statutes is amended by adding at the beginning a new section to read:

"**§ 105-228.90. Scope and definitions.**

(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection fees levied under Article 3 of Chapter 119 of the General Statutes.

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

(1) Code. -- The Internal Revenue Code as enacted as of January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date.

(2) Reserved.

(3) Electronic funds transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct

or authorize a financial institution or its agent to credit or debit an account.

(4) Reserved.

(5) Person. -- An individual, a fiduciary, a firm, a partnership, an association, a corporation, a unit of government, or another group acting as a unit.

(6) Secretary. -- The Secretary of Revenue.

(7) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection fee levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms 'tax' and 'additional tax' include penalties and interest as well as the principal amount.

(8) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Sec. 2. G.S. 105-241 reads as rewritten:

"§ 105-241. ~~Taxes payable in national currency; for what period, and when a lien; priorities.~~ Where and how taxes payable; tax period; liens.

(a) Form of Payment. -- Taxes are payable in the national currency. The Secretary shall prescribe where taxes are to be paid and whether taxes must be paid in cash, by check, by electronic funds transfer, or by another method.

(b) Electronic Funds Transfer. -- The Secretary may not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of each of the taxpayer's required payments of the tax was at least ten thousand dollars ($10,000). The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect for 12 months. After 12 months, the Secretary may require a taxpayer to continue to pay a tax by electronic funds transfer only if the Secretary could have required the taxpayer to begin making payments of the tax in accordance with this subsection.

(c) Tax Period. -- Except as otherwise provided in this Chapter, taxes are levied for the fiscal year of the State in which they became due.

(d) Lien. -- This subsection applies except when another Article of this Chapter contains contrary provisions with respect to a lien for a tax levied in that Article. The lien of a tax attaches to all real and personal property of a taxpayer on the

date a tax owed by the taxpayer becomes due. The lien continues until the tax and any interest, penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona fide purchaser for value or the holder of a duly recorded lien unless:

(1) In the case of real property, a certificate of tax liability or a judgment was first docketed in the office of the clerk of superior court of the county in which the real property is located.

(2) In the case of personal property, there has already been a levy on the property under an execution or a tax warrant.

The priority of these claims and liens is determined by the date and time of recording, docketing, levy, or bona fide purchase.

If a taxpayer executes an assignment for the benefit of creditors or if insolvency proceedings are instituted against a taxpayer who owes a tax, the tax lien attaches to all real and personal property of the taxpayer as of the date and time the taxpayer executes the assignment for the benefit of creditors or the date and time the insolvency proceedings are instituted. In these cases, the tax lien is subject only to a prior recorded specific lien and the reasonable costs of administering the assignment or the insolvency proceedings. ~~The taxes herein designated and levied shall be payable in the existing national currency. State, county, and municipal taxes levied for any and all purposes pursuant to this Subchapter shall be for the fiscal year of the State in which they become due, except as otherwise provided, and the lien of such taxes shall attach annually to all real estate of the taxpayer within the State on the date that such taxes are due and payable, and said lien shall continue until such taxes, with any interest, penalty, and costs which shall accrue thereon, shall have been paid; in the settlement of the estate of any decedent where, by any order of court or other proceeding, the real estate of the decedent has been sold to make assets to pay debts, such sale shall not have the effect of extinguishing the lien upon the land so sold for State taxes, nor shall the same be postponed in any manner to the payment of any other claim or debt against the estate, save funeral expenses and cost of administration.~~

~~Provided, however, that the lien of State taxes shall not be enforceable as against bona fide purchasers for value, and as against duly recorded mortgages, deeds of trust and other recorded specific liens, as to real estate, except upon docketing~~

~~of a certificate of tax liability or a judgment in the office of the clerk of the superior court of the county wherein the real estate is situated, and as to personalty, except upon a levy upon such property under an execution or a tax warrant, and the priority of the State's tax lien against property in the hands of bona fide purchasers for value, and as against duly recorded mortgages, deeds of trust and other recorded specific liens, shall be determined by reference to the date and time of docketing of judgment or certificate of tax liability or the levy under execution or tax warrant. Provided further, that in the event any taxpayer shall execute an assignment for the benefit of creditors, or if receivership, a creditor's bill or other insolvency proceedings are instituted against any taxpayer indebted in the State on account of any taxes levied by the State, the lien of State taxes shall attach to any and all property of such taxpayer or of such insolvent's estate as of the date and time of the execution of the assignment for the benefit of creditors or of the institution of proceedings herein mentioned and shall be subject only to prior recorded specific liens and reasonable costs of administration. Notwithstanding the provisions of this paragraph, the provisions contained in G.S. 105-164.38 shall remain in full force and effect with respect to the lien of sales taxes.~~

~~The provisions of this section shall not have the effect of releasing any lien for State taxes imposed by other law, nor shall they have the effect of postponing the payment of the said State taxes or depriving the said State taxes of any priority in order of payment provided in any other statute under which payment of the said taxes may be required.~~"

Sec. 3. G.S. 105-130.19 reads as rewritten:

"**§ 105-130.19. Time and place of payment of tax.**

~~(a)~~ Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the ~~face of the~~ return shall be paid to the Secretary ~~of Revenue at the office where the return is filed and~~ within the time ~~fixed by law~~ allowed for filing the return. An extension of time granted for filing the return under G.S. 105-130.17(d) is not an extension of time for payment of the full amount of the tax payable. The tax shall be paid at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

~~(b), (c) Repealed by Session Laws 1989, c. 37, s. 1.~~

~~(d) The tax may be paid with uncertified check during such time and under such regulations as the Secretary of Revenue shall prescribe; but if a check so received is not paid by the bank on~~

~~which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered.~~"

Sec. 4. G.S. 105-157 reads as rewritten:

"**§ 105-157. Time and place of payment of tax.**

~~(a)~~ Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on ~~the face of~~ the return shall be paid to the Secretary ~~at the office where the return is filed at the time fixed by law~~ within the time allowed for filing the return. An extension of time granted for filing the return under G.S. 105-155 is not an extension of time for payment of the full amount of the tax payable. If the amount shown to be due is less than one dollar ($1.00), no payment need be made. The tax shall be paid at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

~~(b) The tax may be paid with uncertified check during such time and under such regulations as the Secretary may prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom the check was tendered shall remain liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered.~~"

Sec. 5. G.S. 105-160.7 reads as rewritten:

"**§ 105-160.7. Time and place of payment of tax.**

~~(a)~~ The full amount of the tax payable as shown on ~~the face of~~ the return shall be paid to the Secretary ~~at the office where the return is filed at the time fixed by law~~ within the time allowed for filing the return. However, if the amount shown to be due after all credits is less than one dollar ($1.00), no payment need be made. An extension of time granted for filing the return under G.S. 105-160.6 is not an extension of time for payment of the full amount of the tax payable. The tax shall be paid at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

~~(b) The tax may be paid with uncertified check, but if a check so received is not paid by the financial institution on which it is drawn, the fiduciary by whom the check was tendered shall remain liable for the payment of the tax and for all penalties lawfully imposed.~~"

Sec. 6. G.S. 105-163.6(a) reads as rewritten:

"(a) General. -- A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the

return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or within three banking days, as specified in this section. Withheld taxes shall be paid ~~to the Secretary or to a financial institution with which the Secretary has entered a contract to receive payment of withheld taxes.~~ at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section."

Sec. 7. G.S. 105-164.18 is repealed.

Sec. 8. G.S. 105-236 is amended by adding the following new subdivisions to read:

"(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess an additional tax, as a penalty, equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This subdivision applies to all taxes levied or assessed by the State.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess an additional tax, as a penalty, equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000)."

Sec. 9. G.S. 105-239.1(a) reads as rewritten:

"(a) Property transferred for an inadequate consideration to a donee, heir, legatee, devisee, distributee, stockholder of a liquidated corporation, or any other person at a time when the transferor is insolvent or is rendered insolvent by reason of the transfer shall be subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of ~~such~~ the transfer whether or not the amount of ~~such taxes shall have~~ the taxes has been ascertained or assessed at the time of ~~such~~ the transfer. ~~Such lien shall be subject to the provisions of the~~

~~first proviso contained in G.S. 105-241.~~ G.S. 105-241 applies to this tax lien. In the event the transferee ~~shall have disposed of such~~ has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee shall be personally liable for the difference between the fair market value of ~~such~~ the property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee.

Upon a foreclosure of the State's tax lien upon property in the hands of a transferee, the value of any consideration ~~which the transferee shall have established as having been~~ that the transfer proves has been given to the transferor shall be paid to the transferee out of the proceeds of the foreclosure sale before applying ~~such~~ the proceeds toward the satisfaction of the State's tax lien.

In order to proceed against the transferee or property in ~~his~~ the transferee's hands, the Secretary shall cause to be docketed in the office of the clerk of the superior court of the county wherein the transferee resides or the property is located, as the case may be, a certificate of tax liability as provided in G.S. 105-242 or a lien certificate which shall set forth the amount of the lien as determined by the Secretary or as finally determined upon appeal and a description of the property subject to the lien. Thereafter, execution may be issued against the transferee as in the case of other money judgments except that no homestead or personal exemption shall be allowable or, upon a lien certificate, an execution may be issued directing the sheriff to seize the property subject to the lien and sell same in the same manner as property is sold under execution. Such procedure and collection shall be subject to the provisions of subsection (c) of this section."

Sec. 10. G.S. 105-251 reads as rewritten:

"**§ 105-251. Information must be furnished.**

~~Each company, firm, corporation, person, association, copartnership, or public utility shall furnish the Secretary of Revenue in the form of returns prescribed by him, all information required by law and all other facts and information in addition to the facts and information in this act specifically required to be given, which the Secretary of Revenue may require to enable him to carry into effect the provisions of the laws which the said Secretary is required to administer, and shall make specific answers to all questions submitted by the Secretary of Revenue.~~ Every person shall give the Secretary all information the Secretary requires to fulfill a duty delegated to the Secretary.

The information must be in the form required by the Secretary. The Secretary may require the information to be furnished electronically or on paper."

Sec. 11. G.S. 105-252 reads as rewritten:

"**§ 105-252. Returns required.**

~~Any company, firm, corporation, person, association, copartnership, or public utility receiving~~ A person who receives from the Secretary ~~of Revenue~~ any ~~blanks,~~ form requiring ~~information,~~ information shall fill the form out properly and answer each question fully and correctly. If unable to answer a question, the person shall explain why in writing. ~~cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure.~~ The person shall return the form

~~The answers to such questions shall be verified under oath by such persons, or by the president, secretary, superintendent, general manager, principal accounting officer, partner, or agent, and returned~~ to the Secretary ~~of Revenue at his office within the period fixed by the Secretary of Revenue.~~ at the time and place required by the Secretary. The person shall also furnish an oath or affirmation verifying the return; the oath or affirmation shall be in the form required by the Secretary."

Sec. 12. G.S. 105-259 reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be

determined, deduced or estimated, whether it is set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to the taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning the taxpayer, whether or not the list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife under G.S. 105-152.1 to file a joint return, any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on the joint return shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of these reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for these taxes and as to parties who have paid these license taxes.

When any record of the Department of Revenue has been photographed, photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of that record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any other law relating to the preservation of public records. Any record that has not been so photographed,

photocopied, or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue orders it destroyed.

Any person, officer, agent, clerk, employee, or local tax official or any former officer, employee, or local tax official who violates the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) and/or imprisoned, in the discretion of the court; and if the person committing the violation is a public officer or employee, that person shall be dismissed from such office or employment, and may not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish that person an abstract of the report or return of any taxpayer; or supply that person with information concerning any item contained in any report or return, or disclosed by the report of any investigation of any report or return of any taxpayer. The permission, however, may be granted or the information furnished to the officer or agent only if the statutes of the United States or of the other state grant substantially similar privilege to the Secretary of Revenue of this State or the Secretary's duly authorized representative. Notwithstanding any other provision of law, the Secretary may also furnish names, addresses, and account and identification numbers of (i) taxpayers who may be entitled to property held in the Escheat Fund to the Department of State Treasurer when that Department requests the information for the purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the Employment Security Commission when that Commission requests the information for the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither this section nor any other law prevents the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for

the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with ~~a financial institution~~ financial institutions for the receipt of withheld income tax payments under ~~G.S. 105-163.6.~~ G.S. 105-163.6 and for electronic funds transfers under G.S. 105-241. The Secretary may provide the financial institutions information necessary to identify payments made by taxpayers."

Sec. 13. G.S. 105-269.3 reads as rewritten:

"**§ 105-269.3. Administration and enforcement of Subchapter V and fuel inspection fee.**

~~This Article applies to taxes levied under Subchapter V of this Chapter and to inspection fees levied under Chapter 119 of the General Statutes.~~ The State Highway Patrol and law enforcement officers and other appropriate personnel in the Division of Motor Vehicles of the Department of Transportation may assist the Department of Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers of the Division of Motor Vehicles have the power of peace officers in matters concerning the enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes."

Sec. 14. There is appropriated from the General Fund to the Department of Revenue the sum of seven hundred ninety-five thousand seven hundred fifty-five dollars ($795,755) for the 1992-93 fiscal year to provide for collection of taxes by electronic funds transfer.

Sec. 15. This act becomes effective July 1, 1992.

Explanation of Proposal 16

Legislative Proposal 16 would authorize the Department of Revenue to begin a program requiring taxpayers who owe large periodic tax payments to pay taxes by electronic funds transfer. Electronic funds transfer is a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution to credit or debit an account. According to the Treasury Management Association, as of March 1992, 27 states have electronic funds transfer tax programs in place and many more are expected to adopt programs in the next few years. The Federation of Tax Administrators reports that these programs are generally restricted to business taxes and to the largest taxpayers.

The Department of Revenue requested authorization to implement an electronic funds transfer program in order to enhance the State's cash management, improve the efficiency of processing tax payments, and reduce the volume of paper documents. Based on information received from other states, the Department of Revenue estimated that by using electronic funds transfer, North Carolina could expect to enhance its availability of funds by three to four days. Electronic funds transfer eliminates the "float" created by the delay in processing checks through the postal system and the banking system. The Department of Revenue estimated that interest earned on the State's funds during the extra three- to four-day period could generate approximately $2,500,000 annually once the electronic funds transfer program is fully implemented.

The Department of State Treasurer expressed its support for the proposal, pointing out that an electronic funds transfer program would benefit both taxpayers and the State's cash management program. The Carolina's Cash Management Association also expressed its support for the proposal. The Association, which represents more than 50 of the largest corporations in North Carolina, stated that electronic funds transfer would benefit the corporate community by reducing paperwork, eliminating the processing of checks, and enhancing flexibility and efficiency.

If Legislative Proposal 16 is enacted, the Department of Revenue plans to phase the electronic funds transfer program in over several years; the program would be limited to the largest taxpayers and to taxes that are paid quarterly or more frequently. A financial audit of the Department of Revenue revealed that fewer than one percent of the tax payments received each year account for almost fifty-seven percent of the dollars collected. Thus, the electronic funds transfer program could be used to collect

a large proportion of the taxes due the state while the vast majority of taxpayers could continue to pay by check.

The first phase of the program, planned to begin January 1, 1993, would involve utilities sales tax, utilities franchise tax, corporate income tax, motor fuels tax, and alcoholic beverages excise tax. Taxpayers with average quarterly or more frequent payments of more than $100,000 each would be required to pay electronically. The Department would notify taxpayers who must pay taxes electronically and would educate them as to the procedures to be followed.

In order to implement the electronic funds transfer program, the Department of Revenue would need to make significant changes to its computer systems and accounting procedures. Legislative Proposal 16 would appropriate $795,755 for the 1992-93 fiscal year to pay for the initial costs of the program. Additional appropriations will be necessary in later fiscal years for the costs of the program.

The statutory changes provided in Legislative Proposal 16 eliminate provisions that would otherwise prevent the Secretary from implementing electronic funds transfer and reorganize and clarify the administrative provisions affected. Section 1 of the bill adds a statute to Article 9 of the Revenue Act, which governs administration of the tax laws. The new statute clarifies the scope of Article 9 and sets out definitions used in the Article, including a definition of "electronic funds transfer".

Section 2 of the bill provides that the Secretary shall prescribe where taxes are to be paid and in what form the payments must be made. Section 2 prohibits the Secretary from requiring payment of a tax by electronic funds transfer unless, during the previous 12-month period, the average amount of each of the taxpayer's required payments of that tax was at least $10,000. This threshold protects smaller taxpayers from having to pay by electronic funds transfer. The remainder of Section 2 clarifies and reorganizes statutory language regarding tax liens.

Sections 3, 4, 5, and 6 remove redundant provisions in the Revenue Act regarding payment of taxes and replace them with references to the applicable statute in Article 9, set out in Section 2 of the bill. Section 7 repeals a sales tax statute that is redundant.

Section 8 of Legislative Proposal 16 adds two provisions to the penalty statute. The first is a penalty for making an electronic funds transfer that is not honored due to insufficient funds or nonexistence of an account. Like the penalty for a bad check, this penalty is equal to ten percent of the amount of the payment, with a maximum of $1,000. Like all other penalties except the bad check penalty, this penalty may be compromised or forgiven by the Secretary of Revenue for good cause. Section 8 also adds a penalty for paying a tax in a form other than the form required by the Secretary.

The penalty is equal to five percent of the amount of the tax, with a maximum of $1,000. This penalty will provide an incentive for taxpayers to comply with the electronic funds transfer requirements imposed by the Secretary.

Section 9 of Legislative Proposal 16 makes a conforming change to a cross-reference to the statute reorganized in Section 2. Section 10 provides that the Secretary may require information furnished by taxpayers to be provided electronically; Section 11 clarifies that an affirmation may be furnished separately from a tax return.

The planned electronic funds transfer program would offer the debit and credit methods of payment. Under the debit method, a third party debits the taxpayer's account as previously authorized by the taxpayer. Under the credit method, the taxpayer originates payment through the taxpayer's bank. The transmission of data for these transfers is usually handled through the Automated Clearing House (ACH) system or by a third-party vendor using the ACH system. The Department of Revenue plans to contract service with a bank that has a relationship with a third-party service vendor to effect the actual transfer between the taxpayer's bank and the State depository. Section 12 of Legislative Proposal 16 authorizes the Secretary of Revenue to contract with financial institutions for electronic funds transfers and to provide them the information necessary to identify payments made by taxpayers.

Section 13 of Legislative Proposal 16 eliminates language that duplicates the provisions added in Section 1 of the bill. Section 14 appropriates $795,755 to the Department of Revenue for the 1992-93 fiscal year to implement the electronic funds transfer program. Section 15 provides that Legislative Proposal 16 would become effective July 1, 1992. Because of the time needed by the Department of Revenue to implement the program, the earliest date that electronic payments would actually be required is January 1, 1993.

Proposal 16

Fiscal Report
Fiscal Research Division
April 14, 1992

Summary of Proposal

Please refer to previous explanation of proposed changes prepared by committee counsel.

Effective Date

July 1, 1992

Fiscal Effect

Information received from other states and the Federation of Tax Administrators indicates that North Carolina can expect to enhance its availability of funds by three to four days using an electronic funds transfer program. Investment earnings are expected to increase annually by approximately $2.5 million once the system is fully implemented. Because of the time needed by the Department of Revenue to implement the program, the earliest date the electronic payments would actually be required is January 1, 1993.

APPENDIX A

CHAPTER 754
SENATE BILL 917

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES, AND TO MAKE OTHER AMENDMENTS TO THE LAW.

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1991."

. . . . .

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1991 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) Revenue Laws and the Administration of these Laws, including reviewing 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--study continued (H.J.R. 7 - Lilley),

(2) Medical Malpractice Claims Arbitration -- study continued (H.B. 120 - Robinson, S.B. 65 - Sands),

(3) Surface Water Issues, including consumptive uses of water and the effect of such uses on the State's water resources, other present and projected uses of water, impoundments, and water resources management--study continued (H.J.R. 127 - Payne, S.J.R. 85 - Block),

(4) State Parks and Recreation Areas--study continued (H.B. 141 - N.J. Crawford),

(5) Homeless Persons--study continued (H.J.R. 164 - Lutz),

(6) Worker Training Trust Fund--study continued (H.B. 170 - James, S.B. 203 - Raynor),

(7) Impact of National Developments within the North Carolina Depository Institutions Industry (H.B. 177 - Brubaker),

(8) Department of Transportation Condemnation Practices and Procedures, including the determination of land to be taken, the negotiations with the owner, "quick take" procedures, bringing the condemnation action in court, the compensation, and the award of interest paid on the compensation award (H.B. 261 - Gamble),

(9) Education and Training of Nurses and Shortage of Nurses (H.B. 312 - Nesbitt, S.B. 276 - Daniel),

(10) Horse Racing in North Carolina, including its economic and societal impacts, the benefits to the agribusiness industry in the State, potential

taxes and fees that could be collected, methods for regulation, and other related issues (H.B. 341 - James, S.B. 917 - Martin of Guilford),

(11) Effectiveness and Efficiency of the Public Health System's Delivery of Health Services to the Citizens of the State -- study continued (H.B. 476 - Payne, S.B. 367 - Walker, S.B. 407 - Walker),

(12) All Issues, Including Insurance Coverage, Relating to Individual, Personal Liability of State Personnel for Official Acts (H.B. 509 - Flaherty),

(13) Alternative Approaches to Deal with Discrimination in Employment (H.B. 555 - Kennedy),

(14) Information on the Financial Soundness of Financial Institutions (H.B. 580 - Gamble),

(15) Turfgrass and Forage Assessment, including the issue of allowing producers and others in the industry to levy upon themselves an assessment for the purpose of generating funds for research and educational activities relating to the use of turfgrass and forage (H.B. 633 - James, S.B. 702 - Murphy),

(16) Financial Institutions, including regulations and taxes applicable to commercial banks, savings institutions, and credit unions (H.J.R. 696 - Gamble),

(17) Public Transportation (H.J.R. 700 - Hurley),

(18) Governor's Powers (H.J.R. 731 - James),

(19) Crop Depredation Caused by Wildlife such as Deer and Bear (H.J.R. 732 - James),

(20) Boating and Water Safety (H.B. 834 - Brawley),

(21) Transfer of the Soil and Water Conservation Division of the Department of Environment, Health, and Natural Resources to the Department of Agriculture (H.J.R. 856 - James),

(22) Transfer of the Forest Resources Division of the Department of Environment, Health, and Natural Resources to the Department of Agriculture (H.J.R. 857 - James),

(23) Use of Prison Inmates (H.J.R. 867 - Albertson),

(24) Regulation of Temporary and Other Employment Agencies; Consumer Protection Issues; Licensing Boards (H.J.R. 917 - Wainwright, H.B. 284 - Hasty, H.B. 154 - Holmes),

(25) Workers' Compensation for Farm Workers (H.B. 952 - Hackney),

(26) Inequities in the Salaries of Equally Qualified Minorities, Females, and Nonminority Males within Occupational Categories in State Employment (H.B. 957 - Fitch, S.J.R. 839 - Martin of Guilford),

(27) Glass and Plastic Beverage Container Deposits and Refunds (H.B. 1007 - Gottovi),

(28) Amortization of Nonconforming Uses of Property (H.B. 1009 - S. Hunt),

(29) Ways to Promote the Conservation of Energy and the Use of Renewable Energy Sources in Residential, Commercial, Industrial, and Public Facilities (H.J.R. 1021 - Luebke, S.J.R. 789 - Plexico),

(30) Rights of Victims of Crime (H.B. 1033 - Grady),

(31) Prehospital Emergency Cardiac Care (H.J.R. 1051 - Green),

(32) Promoting the Development of Environmental Science and Bridging Environmental Science and Technology with Public Policy Decision Making (H.B. 1070 - Woodard),

(33) Economic Development and Revitalization of Downtowns (H.J.R. 1083 - Hasty),
(34) Methods to Increase the Developmental Lending Capacity of Financial Institutions to Strengthen Low and Moderate Income Communities (H.B. 1084 - McAllister),
(35) Hazardous Waste Treatment and Disposal--study continued, (H.J.R. 1095 - Hightower),
(36) Feasibility of Toll Roads (H.B. 1098 - Bowman),
(37) Basic Civil Rights of Law Enforcement Officers (H.J.R. 1130 - Miller),
(38) Statewide Comprehensive Planning (H.J.R. 1157 - Hardaway),
(39) Length of the School Year and Compulsory School Attendance Ages Issues (H.B. 1186 - Rogers),
(40) Management of Hazardous Materials Emergencies and Establishment of Regional Response Teams (H.B. 1210 - Flaherty, S.B. 922 - Martin of Pitt),
(41) Firefighter Benefits, including retirement, death, and disability (H.J.R. 1211 - Fitch),
(42) Railroads--study continued, including the present condition of the rail transportation system, the future of railroads, rail revitalization, and rail corridor preservation (H.J.R. 1226 - Abernethy, S.J.R. 906 - Block),
(43) Uniform Administration of All County Register of Deeds Offices (H.B. 1232 - Buchanan),
(44) Transfer of the Health Divisions from the Department of Human Resources to the Department of Environment, Health, and Natural Resources (H.J.R. 1280 - Jeralds),
(45) Regulation of Aerial Application of Pesticides (H.J.R. 1289 - James),
(46) Minority Tourism Proposal, including ways to encourage minorities to visit the State for the purposes of tourism, conferences, and conventions (H.J.R. 1292 - Hardaway),
(47) Annexation Laws (H.J.R. 1295 - Decker),
(48) Pay Plan for State Employees,
(49) Development of a State Strategy for the Protection of All Groundwater Resources -- study continued (S.J.R. 13 - Tally),
(50) Physical Fitness Among North Carolina Youth (S.B. 15 - Tally),
(51) Solid Waste and Medical Waste Management -- study continued, including the use of incineration, particularly the use of mobile incinerators, as a method of treatment (S.J.R. 143 - Tally),
(52) Advance Disposal Fees Used To Promote Nonhazardous Solid Waste Reduction and Recycling (S.B. 229 - Odom).
(53) Public School Administrators (S.B. 441 - Perdue),
(54) Motor Vehicle Towing and Storage (S.B. 687 - Sands),
(55) Revision of the Arson Statutes (S.J.R. 736 - Sands),
(56) Tourism's Growth and Effect -- study continued (S.B. 819 - Warren).
(57) Emergency Medical Services Act of 1973 (S.J.R. 902 - Speed),
(58) State Correctional Education (S.B. 945 - Carter),
(59) State Emergency Management Program, including natural hazards, recovery operations for Presidential or Gubernatorial declared disasters, and catastrophic hazards (S.J.R. 946 - Basnight),
(60) Law Enforcement Issues (S.J.R. 955 - Perdue),
(61) Teacher Leave (H.B. 334 - Bowman),
(62) North Carolina Air Cargo Airport Authority (S.B. 649),

(63) Licensure of Radiologic Technologists as requested in the Final Assessment Report on Senate Bill 738 by the Legislative Committee on New Licensing Boards,
(64) Sales Tax Impact on Merchants, including the effects of the short notice time for the implementation of the 1991 sales tax increase, and
(65) Methods to Improve Voter Participation.

Sec. 2.2. Child Day Care Issues (H.B. 1062 - Easterling). The Legislative Research Commission may study the issue of child day care. The study may focus its examination on the issues related to child day care as they relate to availability, affordability, and quality of child day care in North Carolina, including:

(1) Prior recommendations of other study commissions which have reviewed child day care services since 1980 and an assessment of compliance with these recommendations;
(2) The advantages and costs associated with measures to improve the quality of day care, including lowering staff/child ratios, enhancing day care teacher credentialing, improving training of day care teachers, and improving the salaries of all day care workers;
(3) Measures to enhance the availability and affordability of day care in currently underserved areas of the State, especially rural communities;
(4) Ways to maximize the positive impact on North Carolina's child day care providers and resource and referral networks from the availability of federal funds under the Child Care Block Grant;
(5) The implementation of the Governor's Uplift Child Day Care initiative;
(6) The current statutory regulation of child day care and the procedures used to develop policies and rules under the current structure; and
(7) The relationship between child day care services offered by for-profit and nonprofit, public and private, day care providers to other potential sources of child care and child development services including Head Start programs and North Carolina's public schools, with a view toward developing a unified State policy for funding and delivery of all early childhood development services.

Sec. 2.3. Beach and FAIR Plans Study (Basnight, Block). The Legislative Research Commission may study the North Carolina Insurance Underwriting Association and its operation of the Beach Plan, which was authorized by Article 45 of Chapter 58 of the General Statutes to provide an adequate market for essential property insurance in the beach area of North Carolina; and the underwriting association of the FAIR Plan and its operation of the FAIR Plan, which was authorized by Article 46 of Chapter 58 of the General Statutes to facilitate the issuance of basic property insurance to encourage the improvement of properties considered to be high risk. The study, if undertaken, may include the following:

(1) The operating procedures and operating plans of the Beach Plan and the FAIR Plan;
(2) How the Beach Plan and the FAIR Plan effect coverage:
(3) The types of coverage offered, including coverage for wind and hail damage, by the Beach Plan and the FAIR Plan, and coverage availability and cost; and
(4) Whether the operations of the Beach Plan and the FAIR Plan are fulfilling the purposes of the plans, as stated in their statutory authorizations.

Sec. 2.4. North Carolina Indian Cultural Center Study (Martin of Guilford, Parnell). The Legislative Research Commission may study the issue of developing the North Carolina Indian Cultural Center in Robeson County. This study may include:

(1) The purpose of and need for the North Carolina Indian Cultural Center and the history of its development up to the current time;
(2) Identification of the barriers to the Center's development, the impact of those barriers, and methods for overcoming those barriers;
(3) Examination of various models of similar centers to determine if those models are adaptable to circumstances in North Carolina;
(4) Determination of the direct and collateral benefits to be derived from this project and to whom those benefits accrue; and
(5) Any related issues the committee deems appropriate.

Sec. 2.5. Lobbyist Regulation Study (Odom). The Legislative Research Commission may study the implementation of House Bill 89, if ratified. The study, if undertaken, may include the following issues:
(1) Whether additional changes should be made in Article 9A of Chapter 120 of the General Statutes concerning lobbying and lobbyists;
(2) Whether the law governing lobbying and lobbyists should be expanded to cover lobbying of the executive branch, including administrative agencies, boards and the Council of State; and
(3) Lobbying in the General Assembly by State departments, agencies, boards, local governments, or other organizations.

Sec. 2.6. Governmental Ethics Study (S.B. 259 - Daniel). The Legislative Research Commission may study the advisability of, by law, adopting or authorizing the adoption of ethical codes for State and local governmental officials and employees in North Carolina. If the study is undertaken, the Commission may investigate:
(1) The strengths and weaknesses of the present systems of helping to insure ethical conduct for administrative officials and employees at the State and local level;
(2) Whether a single agency should be established to coordinate the State and local efforts at insuring ethical administrative conduct, or whether local government units should have a separate mechanism or mechanisms to accomplish this end;
(3) If coordinating agency or agencies should be created or authorized:
    a. The agency or agencies' duties and powers, including the authority to create codes of ethics for those officials and employees, and to advise those affected on the conformity of conduct to those codes;
    b. Adequate standards on which to base these codes;
    c. The public officials and employees who should be subject to the jurisdiction of the agency or agencies;
    d. The sanctions, if any, which should attend the violation of an established ethical code; and
(4) Whether the present criminal law is adequate to cover grossly offensive unethical conduct.

Sec. 2.7. Committee Membership. For each Legislative Research Commission Committee created during the 1991-93 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.8. 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 1992 Regular Session of the 1991 General Assembly or the 1993 General Assembly, or both.

Sec. 2.9. 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. 2.10. 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 1991

H 1

HOUSE JOINT RESOLUTION 7

Sponsors: Representatives Lilley, Abernethy, Brawley, Hasty; and Warner.

Referred to: Rules.

February 4, 1991

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

Whereas, the Legislative Research Commission has been authorized by the 1977, 1979, 1981, 1983, 1985, 1987, and 1989 General Assemblies to conduct a study of the revenue laws of North Carolina; and

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

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

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

Section 1. The Legislative Research Commission is authorized to study the revenue laws of North Carolina and the administration of these laws. 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. When the recommendations of the Commission, if enacted, would result in an increase or decrease in State tax revenues, the report of the Commission shall include an estimate of the amount of the increase or decrease.

Sec. 2. The Commission may call upon the Department of Revenue to cooperate with it in its study of the revenue laws. The Secretary of Revenue shall ensure that the Department's staff cooperates fully with the Commission.

Sec. 3. The Commission shall make a final report of its recommendations for improvement of the revenue laws to the 1993 General Assembly and may make an interim report to the 1992 Session of the 1991 General Assembly.

Sec. 4. This resolution is effective upon ratification.

APPENDIX B

REVENUE LAWS STUDY COMMITTEE

1991 - 1992

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

Rep. John R. Gamble, Jr., Cochair
P. O. Box 250
Lincolnton, North Carolina

Sen. John Carter
Route 9, Box 994
Lincolnton, North Carolina

Rep. Mary L. Jarrell
1010 Wickliff Avenue
High Point, North Carolina

Ms. Lillian O'Briant
865 Redding Road
Asheboro, North Carolina

Rep. Larry T. Justus
P. O. Box 2396
Hendersonville, North Carolina

Sen. J. Clark Plexico
P. O. Box 1904
Hendersonville, North Carolina

Rep. John H. Kerr, III
P. O. Box 1616
Goldsboro, North Carolina

Mr. Wes Seegars
1400 S. George Street
Goldsboro, North Carolina

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

Sen. Mary Seymour
1105 Pender Lane
Greensboro, North Carolina

Rep. Paul Luebke
1311 Alabama Avenue
Durham, North Carolina

Sen. William W. Staton
P. O. Box 1320
Sanford, North Carolina

Rep. Timothy N. Tallent
565 Windsor Place, NE
Concord, North Carolina

LRC member responsible for study: Rep. Marie W. Colton

Staff: Martha H. Harris, Bill Drafting Division

Sabra J. Faires, Fiscal Research Division

Ruth Sappie, Fiscal Research Division

Jackie U. Pittman, Committee Clerk

APPENDIX C

North Carolina General Assembly
Legislative Services Office
Legislative Office Building
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

GEORGE R. HALL, JR., Legislative Administrative Officer
(919) 733-7044

M. GLENN NEWKIRK, Director
Automated Systems Division
Suite 400, (919) 733-6834

GERRY F. COHEN, Director
Bill Drafting Division
Suite 100, (919) 733-6660

THOMAS L. COVINGTON, Director
Fiscal Research Division
Suite 619, (919) 733-4910

TERRENCE D. SULLIVAN, Director
Research Division
Suite 545, (919) 733-2578

6-APR-92

MEMORANDUM

TO: Revenue Laws Study Committee

FROM: Myra M. Torain and Martha H. Harris

SUBJECT: Bills Recommended to the 1991 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 1991 General Assembly. The majority of the committee's recommendations became law. Of the 25 proposals, 20 were enacted in whole or in part. The remaining 5 are pending and eligible for consideration in the 1992 Regular Session.

Legislative Proposal 1: Enacted.

House Bill 9, **AN ACT TO REINSTATE SALES TAX ON MOPEDS, TOW DOLLIES, AND CERTAIN VEHICLE BODIES AND TO ESTABLISH A UNIFORM LONG-TERM LEASING RATE,** was introduced by Representative Lilley and ratified as Chapter 79 of the 1991 Session Laws.

Legislative Proposal 2: Enacted.

House Bill 8, **AN ACT TO IMPROVE THE ADMINISTRATION OF THE HIGHWAY TRUST FUND AND TO MAKE TECHNICAL CHANGES TO THE LAWS AFFECTED BY THE HIGHWAY TRUST FUND,** was introduced by Representative Lilley and after some modifications was ratified as Chapter 193 of the 1991 Session Laws.

Legislative Proposal 3: Enacted.

House Bill 10, **AN ACT TO ALLOW LESSORS AND RENTERS OF MOTOR VEHICLES TO ELECT TO PAY HIGHWAY USE TAX ON MOTOR VEHICLES OWNED ON OCTOBER 1, 1989, AND TO CLARIFY THAT THESE MOTOR VEHICLES ARE**

OTHERWISE SUBJECT TO THE GROSS RECEIPTS TAX, was introduced by Representative Lilley and after some modifications was ratified as Chapter 46 of the 1991 Session Laws.

Legislative Proposal 4: Enacted in part.

Senate Bill 111, **AN ACT TO LOWER THE MINIMUM HIGHWAY USE TAX AND TO EXEMPT CERTAIN TRANSFERS OF VEHICLES FROM THE TAX,** was introduced by Senator Winner and after some modifications, passed the Senate. Part of the bill was incorporated in **The Appropriations and Budget Revenue Act of 1991,** Chapter 689 of the 1991 Session Laws. The recommendation that the minimum highway use tax be lowered was not enacted. In addition, the recommended exemptions for driver education vehicles and vehicles the Department of Human Resources equips for use by handicapped individuals were not enacted. These parts of the proposal remain eligible for consideration in 1992. Finally, the recommended exemption for gifts between wife and husband or parent and child was expanded to exempt all conveyances between these relatives. The Committee may want to review this expanded exemption.

Legislative Proposal 5: Enacted.

House Bill 11, **AN ACT TO APPLY THE TIRE TAX, USED TO PAY FOR THE DISPOSAL OF SCRAP TIRES, TO NEW TIRES FOR ROAD CONSTRUCTION EQUIPMENT AND OTHER NEW VEHICLE TIRES,** was introduced by Representative Lilley. The bill was amended to remove the exemption for aircraft tires and, after some technical modifications, was ratified as Chapter 221 of the 1991 Session Laws.

Legislative Proposal 6: Enacted.

House Bill 12, **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 passed the House. The bill was incorporated in **The Appropriations and Budget Revenue Act of 1991,** Chapter 689 of the 1991 Session Laws.

Legislative Proposal 7: Enacted.

Senate Bill 114, **AN ACT TO REPEAL INHERITANCE TAX EXEMPTIONS FOR CERTAIN TYPES OF PROPERTY,** was introduced by Senator Winner and ratified as Chapter 454 of the 1991 Session Laws.

Legislative Proposal 8: Enacted.

Senate Bill 105, **AN ACT TO PROVIDE FOR PAYMENT OF EXCESS DAMAGES AGAINST A STATE EMPLOYEE FOR COLLECTING OR ADMINISTERING AN UNCONSTITUTIONAL TAX,** was introduced by Senator Winner and referred to the Senate Constitution Committee. The same bill was introduced by Representative Miller as House Bill 547 and was ratified as Chapter 674 of the 1991 Session Laws.

Legislative Proposal 9: Pending.

Senate Bill 113, **AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME TAX RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH CAROLINA SOURCES,** was introduced by Senator Winner and referred to Senate Finance.

Legislative Proposal 10: Pending.

Senate Bill 106, **AN ACT AUTHORIZING NONRESIDENT TAXPAYERS TO CLAIM THE TAX CREDIT FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES,** was introduced by Senator Winner and referred to Senate Finance.

Legislative Proposal 11: Enacted.

Senate Bill 103, **AN ACT TO CLARIFY SUBCHAPTER S CORPORATION LOSS CARRYFORWARDS,** was introduced by Senator Winner and ratified as Chapter 752 of the 1991 Session Laws.

Legislative Proposal 12: Enacted.

Senate Bill 104, **AN ACT TO ELIMINATE A TAXPAYER'S DEDUCTION FOR CERTAIN CONTRIBUTIONS OF LAND OR CROPS TO ACCOUNT FOR TAX CREDITS ALLOWED FOR THE SAME CONTRIBUTIONS,** was introduced by Senator Winner and ratified as Chapter 453 of the 1991 Session Laws.

Legislative Proposal 13: Enacted.

House Bill 13, **AN ACT TO ELIMINATE THE FRANCHISE TAX INITIAL RETURN AND TO INCREASE THE MINIMUM FRANCHISE TAX,** was introduced by Representative Lilley and after some technical modifications was ratified as Chapter 30 of the 1991 Session Laws.

Legislative Proposal 14: Enacted.

House Bill 79, **AN ACT TO SIMPLIFY THE ADMINISTRATION OF THE EXCISE TAX ON SOFT DRINKS,** was introduced by Representative Lilley and assigned to the House Finance subcommittee on State

Revenue. It was incorporated in **The Appropriations and Budget Revenue Act of 1991**, Chapter 689 of the 1991 Session Laws.

Legislative Proposal 15: Enacted.

House Bill 23, **AN ACT TO MODIFY THE FUEL TAX STATUTES TO ENABLE NORTH CAROLINA TO ENTER THE INTERNATIONAL FUEL TAX AGREEMENT**, was introduced by Representative Lilley and after some modifications was ratified as Chapter 487 of the 1991 Session Laws.

Legislative Proposal 16: Enacted.

Senate Bill 110, **AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAXES ON MOTOR FUELS, SPECIAL FUEL, AND MOTOR CARRIERS, AND TO TEMPORARILY RESTORE THE $40,000 CAP ON BONDS THAT MAY BE REQUIRED OF FUEL DISTRIBUTORS AND SUPPLIERS**, was introduced by Senator Winner and after some modifications was ratified as Chapter 42 of the 1991 Session Laws.

Legislative Proposal 17: Enacted.

Senate Bill 112, **AN ACT TO MAKE ANNUAL SPECIAL FUEL REPORTS DUE THE SAME TIME AS ANNUAL MOTOR CARRIER REPORTS AND TO MAKE CONFORMING CHANGES TO THE MOTOR CARRIER LAWS TO FACILITATE ANNUAL MOTOR CARRIER REPORTS**, was introduced by Senator Winner and after some modifications was ratified as Chapter 182 of the 1991 Session Laws.

Legislative Proposal 18: Pending.

Senate Bill 96, **AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING STATE SALES AND USE TAXES**, was introduced by Senator Winner and referred to Senate Finance.

Legislative Proposal 19: Pending.

Senate Bill 115, **AN ACT TO SIMPLIFY LICENSE TAX FILING FOR RETAILERS AND WHOLESALERS**, was introduced by Senator Winner and referred to Senate Finance.

Legislative Proposal 20: Enacted.

House Bill 24, **AN ACT TO CONSOLIDATE THE LAWS CONCERNING REPORTS BY THE DEPARTMENT OF REVENUE**, was introduced by Representative Lilley and ratified as Chapter 10 of the 1991 Session Laws.

Legislative Proposal 21: Enacted in part.

Senate Bill 107, **AN ACT TO SIMPLIFY AND MODERNIZE PRIVILEGE LICENSE TAXES RELATING TO DRY CLEANERS AND LAUNDRIES,** was introduced by Senator Winner and after some modification was enacted in part as Chapter 479 of the 1991 Session Laws. The part of the proposal that addressed the privilege license tax on hotels and motels was not enacted.

Legislative Proposal 22: Enacted.

Senate Bill 108, **AN ACT TO IMPROVE ADMINISTRATION OF THE SALES AND USE TAX BY INCREASING THE LICENSE TAXES, ALLOWING MORE SMALL RETAILERS TO FILE QUARTERLY SALES TAX RETURNS, AND EXTENDING THE LIMITATIONS PERIOD FOR ENFORCING LIABILITY AGAINST CERTAIN TRANSFEREES AND CORPORATE OFFICERS, AND TO MAKE TECHNICAL CORRECTIONS TO THE REVENUE LAWS,** was introduced by Senator Winner and after some modifications was ratified as Chapter 690 of the 1991 Session Laws.

Legislative Proposal 23: Pending.

Senate Bill 109, **AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX INFORMATION, TO MODIFY THE PROHIBITION TO PERMIT THE EXCHANGE OF CERTAIN INFORMATION BETWEEN DESIGNATED AGENCIES, AND TO EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FORM FROM THE PROHIBITION,** was introduced by Senator Winner and after some modifications, passed the Senate. It remains in House Judiciary II.

Legislative Proposal 24: Enacted.

House Bill 61, **AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS AND RELATED STATUTES,** was introduced by Representative Lilley and ratified as Chapter 45 of the 1991 Session Laws.

Legislative Proposal 25: Enacted.

House Bill 7, **A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF NORTH CAROLINA,** was introduced by Representative Lilley and re-referred to the Committee on Appropriations but did not pass as a separate resolution. However, the study was continued in Chapter 754 of the 1991 Session Laws.

APPENDIX D

SPEAKERS AT COMMITTEE MEETINGS

SPEAKER	SUBJECT OF PRESENTATION
Don Liner, Institute of Government	Principles of Taxation and North Carolina's Tax Structure
Harlan Boyles State Treasurer	Observations on North Carolina's Tax Structure
George Boylan Attorney General's Office	Status of Swanson and Bailey Lawsuits
Ricky Smith Emerald Isle, N. C.	Roadside Vendors
David S. Flowers Hickory, N. C.	N. C. Automotive Wholesalers Association
William A. Campbell Institute of Government	Property Tax on Automobiles
Jim Blackburn N. C. Association of Co. Commissioners	Property Tax on Automobiles
Mike Hodges N. C. Department of Revenue	Collection of Income Tax from Nonresidents Who Sell Real Property located in N.C.
Edward Renfrow, State Auditor	Tax Philosophy
Rep. Vernon Abernethy	Scrap Tire Tax Changes
John Hubler Freightliner Corporation Gastonia, N. C.	Scrap Tire Tax Changes
Odell Payne, Guilford Co.	Inventory Tax Reimbursement
Marvin Musselwhite Smokeless Tobacco Council	Refunds of Tobacco Tax on Stale Tobacco Products
Keith McCombs N. C. Department of Revenue	Electronic Funds Transfer
Doug Chappell State Treasurer's Office	Electronic Funds Transfer

APPENDIX E

North Carolina Department of Revenue

James G. Martin, Governor

Betsy Y. Justus, Secretary

February 3, 1992

MEMORANDUM

TO: Myron C. Banks
Deputy Secretary

FROM: Michael S. Hodges MSH
Assistant Secretary for Personal Taxes

SUBJECT: Changes in the Internal Revenue Code Affecting the Individual Income, Inheritance and Gift Tax Division if References to the Code are Updated to January 1, 1992

There have been no changes to the Internal Revenue Code affecting individual income, inheritance and gift taxes if the references to the Code are updated to January 1, 1992. However, provisions in the Code requiring inflation adjustments will have some effect on tax collections. For tax years beginning on or after January 1, 1991, taxpayers with adjusted gross incomes exceeding certain base amounts must reduce their personal exemptions and certain of their itemized nonbusiness deductions. For 1992, the base amounts have been increased for inflation. We believe and Niki concurs that the fiscal effect of these changes is negligible. The following table reflects the changes to the base amounts of adjusted gross income before the reduction occurs.

1. Personal exemption - base amount before reduction increased to -
   a. $157,900 from $150,000 for married filing jointly or surviving spouse
   b. $105,250 from $100,000 for single
   c. $131,550 from $125,000 for head of household
   d. $ 78,950 from $ 50,000 for married filing separately

2. Itemized deductions - base amount before reduction increased to -
   a. $105,250 from $100,000 for all but married filing separately
   b. $ 52,625 from $ 50,000 for married filing separately

The amount of personal exemption, basic standard deduction, and additional standard deduction for being over 65 years of age or blind have also been increased for inflation but these changes will have no effect on revenues since the taxpayer is required to add to federal taxable income those inflation adjustments in arriving at North Carolina taxable income.

cc: Niki Underwood, Director
Tax Research Division

P.O. Box 25000, Raleigh, North Carolina 27640
State Courier 51-71-00

COPY

North Carolina Department of Revenue

James G. Martin, Governor

Betsy Y. Justus, Secretary

February 4, 1992

MEMORANDUM

TO: Myron C. Banks
Deputy Secretary

FROM: Larry D. Rogers, Director
Corporate Income and Franchise Tax Division

SUBJECT: 1991 Corporate Changes in Internal Revenue Code

As requested, we have reviewed the latest corporate tax law changes in the Internal Revenue Code. We find no changes having a significant effect in revenue should the "Code" reference in Franchise Tax, Corporate Income Tax and S Corporation Income Tax be updated from January 1, 1991 to January 1, 1992.

P.O. Box 25000, Raleigh, North Carolina 27640
State Courier 51-71-00

APPENDIX F

April 16, 1992

North Carolina's Fiscal Policy

Introduction

This statement has been prepared by the Institute of Government at the request of Representative John R. Gamble, Jr., Co-chairman of the Revenue Laws Study Committee, for the information of the committee's members.

The aim of this paper is to state in comprehensive, simple terms the scheme that has evolved over two centuries for financing government in North Carolina. This requires an examination of both state and local government, since responsibility for many functions is shared, and local governments are heavily dependent on state-collected taxes. It is essential also that the statement comprehend spending as well as taxing policies, since neither is understandable without knowledge of the other.

The need for brevity requires omission of many details and exceptions that affect specific spending and taxing policies.

I. Responsibility for North Carolina's fiscal system.

The General Assembly is responsible (1) for organizing a system of state agencies and local governmental units,[1] (2) for assigning responsibility within that system for providing and financing various public services, (3) for enacting laws governing the administration of public services, (4) for enacting laws levying taxes, imposing fees, and authorizing other revenue sources for state agencies and institutions, and budgeting or otherwise authorizing the expenditure of revenues so generated, and (5) for enacting laws authorizing taxes, fees, and other revenue sources for local governments and specifying the uses to which those revenues may be put.[2]

II. Responsibility for providing public services.

A. State-local responsibilities.

The state government and units of local government share responsibility for providing public services, as follows.

1. *State agencies* administer statewide programs directly, as in the case of highways, corrections, and courts, or supervise and regulate statewide programs administered by counties, as in the case of public schools, social service programs, and public health programs.

2. *Counties* are agents of the state government. In that role they are responsible for providing basic services, such as elementary and secondary education, public health protection, and social services programs, that must be made available to all people of the state, whether they live in cities and towns or in the countryside. Counties may also act as units of local government in providing for their residents, at local option, additional services, which their residents usually finance.

3. *Municipal governments* are responsible for providing local services in a limited geographical area that are not provided by the state or county government, or for providing a higher level of service than that provided by the state or county government, for people who live in a municipality and who choose, by decision of their elected officials, to pay for those services from revenues under local control.

B. Program responsibilities.

1. Elementary and secondary education. The General Assembly is responsible for providing for a general and uniform system of free public schools.[3] It may assign responsibility for financial support to local units.[4] The state government is responsible for paying from state revenues the operating costs of providing the standard course of study in all schools.[5] Under the Basic Education Program, which was enacted in 1985 and is to be fully operational by July 1, 1995, the standard course of study is the education program that should be made available to all children in the public schools.[6] The state allocates funds to local units for this purpose according to about eighty allocation formulas, and the state pays teachers and other school personnel according to a uniform, statewide salary schedule. Additional state funds are provided to some low-wealth counties and to some units with small enrollments.[7] Local units may supplement any public school program provided by the state.[8] Counties are responsible for buildings and other facilities.[9] However, state revenues are distributed to counties to aid them in school construction[10], and, for a limited period, part of county local-option retail sales tax collections must be used for this purpose.[11]

2. Higher education. The state maintains a public system of higher education, as required by the Constitution.[12] The state government is solely responsible for the sixteen-campus university system. The state government and counties share responsibility for community colleges: the state government pays for instructional and administrative expenses, while counties are responsible for constructing buildings (for which they receive state aid) and for building maintenance, utilities, and other expenses.[13]

3. Judicial system. The state government is responsible for administering the court system and for paying all operating expenses.[14] Counties are responsible for building and maintaining local court facilities.[15]

4. Corrections. The state government is responsible for incarcerating all prisoners sentenced to serve 30 days or more, but prisoners sentenced to terms of less than 180 days are incarcerated in local jails and the state compensates local units for the expense.[16] Local units are responsible for incarcerating those awaiting trial.

5. Highways. The state government is responsible for building and maintaining all public highways, roads, and streets except those municipal streets that are not part of the state road network, and it pays part of the cost of building and maintaining municipal streets that are not part of the state road network by sharing state gasoline tax receipts with municipalities, as noted below. (Counties have no responsibility for highways, roads, or streets.)

6. Social services programs. Counties are responsible for local administration of various social services programs supervised by the state. Counties must provide certain programs according to state standards, but they have discretion in choosing whether or not to provide certain other services and in choosing a higher level of service than that required by the state. The costs of social services programs are borne mainly by the state and federal governments. Counties must pay local administrative expenses and a share of other costs of most programs. For example, counties must pay five per cent of Medicaid expenses, which is the largest single county obligation for social services programs. The counties' share of other costs varies among programs, from nothing to 100 per cent.

7. Public health programs. All counties provide public health services, either individually or as part of a multi-county health district, with oversight from the state. Counties pay for more than half the expenses of providing those services. State agencies make most of the rules for environmental health programs, such as those pertaining to septic tanks and restaurants, but local units are primarily responsible for administering them.

8. Mental health. The state maintains hospitals for the mentally ill, facilities for the developmentally disabled, and facilities for alcohol and drug rehabilitation. Community-based programs in mental health, developmental disability, and substance abuse are delivered through single- or multi-county authorities established as special purpose units of government. These authorities operate under standards and mandates set by the state government, which provides a large share of funds used in local programs.

9. Environmental protection programs. The state has primary responsibility for basic air and water pollution control programs, with some involvement of local government. State responsibility is coupled with greater local responsibility in the cases of coastal regulation, septic tank laws, watershed protection, sedimentation control, and soil and water conservation. Counties and municipalities generally share in responsibility for solid waste collection and disposal. Local units, primarily municipalities, are responsible for water and sewer treatment, storm water facilities, and land use regulation.

10. Law enforcement. Local law enforcement responsibilities are shared by county sheriffs and municipal police departments, the latter acting essentially within municipal boundaries and the former acting essentially outside municipal boundaries, although the sheriff's legal authority is the same inside and outside towns in his county. Other, specialized law enforcement functions are provided through state agencies such as the State Bureau of Investigation, the State Highway Patrol, the Wildlife Resources Commission, and the Department of Motor Vehicles.

III. Revenue sources.

A. "The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away." (N.C. Constitution, Art. II, Sec. 23(1)). Revenues, whether for state or local use, may be levied only under authority of laws enacted by the General Assembly.[17]

B. Limitations.

1. General. The rate of taxation on incomes is limited to 10 per cent of net income.[18] No poll or capitation tax may be levied by any taxing unit.[19]

2. Property tax limitations. Only the General Assembly may classify property for taxation.[20] Property of the federal government, the state, and units of local government is exempt from taxation.[21] The General Assembly may exclude from the property tax base, or provide for other preferential treatment of, other classes of property, but it must do so by uniform statewide laws.[22] Property taxes may be levied without an approving vote of the people only for purposes authorized by general laws uniformly applicable throughout the state.[23] Property tax levies for debt service and most mandated county functions are subject to no restrictions as to rate or amount. Levies for all other purposes except city bus and county housing programs (which require voter approval) require voter approval only if the combined levy for these purposes exceeds $1.50 per hundred-dollar valuation (in practice this limitation has not been restrictive).[24]

C. Major tax sources.

1. State sources.

a. The state relies primarily on personal income and retail sales taxes for raising general revenue for state purposes. According to estimates for 1991-92, these taxes will account for 48 and 29 per cent, respectively, of General Fund tax revenue.[25] The corporate income tax and franchise taxes will account for 8 and 5 per cent, respectively, of General Fund tax revenue. The remaining 9 per cent of General Fund tax revenue will come from alcoholic beverage, insurance, inheritance, soft drink, and other taxes.

(1). The personal income tax is imposed on net taxable income according to a graduated rate schedule, and therefore the amount of the tax varies with amounts of income, exemptions, and deductions. Net taxable income for state purposes is net taxable income as defined by the federal tax code, adjusted to account for special provisions of the North Carolina tax.[26] For example, the value of personal exemptions and the standard deduction are adjusted annually for inflation under the federal tax code, but for the North Carolina tax these values ($2,000 and $5,000 for joint returns, respectively) are frozen at levels set in 1989. Tax brackets vary with filing status. For married couples, the tax rate on net taxable income is 6 per cent on net taxable income of $21,250 or less, 7 per cent on net taxable income of $21,250 to $100,000, and 7.75 per cent on net taxable income over $100,000.[27]

(2). The retail sales tax is broadly based, with relatively few exemptions. The base includes sales of most types of tangible personal property (including food) and sales of electricity, natural gas, and telephone service. Sales of personal and professional services are not taxed, except for laundry and dry cleaning

service and room rentals. Exemptions include eyeglasses, prescription drugs, and numerous miscellaneous items. Some items are taxed at a rate lower than the general state rate (now 4 per cent) or taxed subject to a maximum.

b. Highway construction and maintenance are supported by user-related taxes and fees, and generally those revenues are used only for that purpose (some exceptions apply[28]). The gasoline and highway use taxes (the latter is a sales tax on vehicle purchases collected when title is transferred) and highway-related license fees provide the major support for highway construction and maintenance.

2. Local government sources.

a. Local governments rely for general tax revenue primarily on the property tax and local-option retail sales taxes. These taxes accounted for 63 and 26 per cent, respectively, of estimated county tax revenue in 1990-91. They accounted for 52 and 22 per cent, respectively, of estimated municipal tax revenue that year.[29] The local-option retail sales tax, which is collected by the state, is levied at the rate of two per cent in all counties. Revenue accruing from one cent of the sales tax is distributed to the county area where the tax is collected. The revenue from the second cent is distributed to county areas according to county population. The total local sales tax allocated to a county area is divided among the county and municipal governments in that county according to either ad valorem tax levy or population, as the county governing board may determine.

b. The state levies and collects a property tax on certain classes of intangible personal property (principally accounts receivable, bonds, and stocks) and distributes the proceeds to counties and municipalities where they are collected. The state does not levy a general property tax for its own use, and has not done so for sixty years.

c. Other local taxes. Other taxes authorized for general use by counties and cities include various privilege license taxes, cable franchise taxes, animal taxes, motor vehicle license taxes, and 911 charges. By authority of local legislation, some units levy occupancy, land transfer, admissions, and prepared meals taxes.

d. State-shared taxes. Several kinds of taxes are, for convenience and efficiency, collected by the state on behalf of counties and municipalities. Revenues from beer and wine taxes are shared with counties and municipalities that allow beer and wine sales. Municipalities receive a share of gasoline and highway trust fund revenues for use in constructing and maintaining municipal streets that are not part of the state road network. Revenues from this source accounted for 6.6 per cent of estimated municipal tax revenue in 1990-91. Municipalities receive the net proceeds from the franchise tax of 3.22 per cent levied on sales by privately-owned utility companies of electricity, gas, and telephone services within the municipality. These revenues accounted for 8.9 per cent of estimated municipal tax revenue in 1990-91. Counties receive half the revenues from the state-levied excise stamp tax on conveyances of real property. State-shared taxes are disbursed to local units by appropriation from the state's General Fund.

e. Tax cut reimbursements. Counties and municipalities receive funds by appropriation from the state's General Fund as reimbursements for

revenue lost because of repeal of the property tax on business inventories, exclusion of cash balances from the intangible property tax, and some other measures of the 1980s that reduced local tax revenue. Such reimbursements accounted for 6.6 and 5.5 per cent of estimated county and municipal tax revenue, respectively, in 1990-91.

IV. Budgeting, Spending, and Debt.

A. Budgeting.

1. General. State funds may be spent only if appropriated by law, and local funds may be spent only by authority of law.[30]

2. State government. The Governor prepares a proposed budget for legislative consideration, and executes the legislatively enacted budget.[31] The operating budget must be balanced, and the Governor must ensure that spending not exceed available revenue.[32] State budget policies are governed further by the Executive Budget Act.[33]

3. Local governments. All funds received and spent by local government agencies must be budgeted, dispersed, and accounted for in accordance with the Local Government Budget and Fiscal Control Act[34] or the School Budget and Fiscal Control Act,[35] both of which are enforced by the Local Government Commission. Under these acts, local funds may be budgeted in an annual budget ordinance or, in the case of capital facility projects or projects involving federal or state project grants, in a project ordinance, which provides spending authority for the life of a project (project ordinances are not authorized for school units). All local annual and project budgets must be balanced, with the sum of estimated revenues and appropriated fund balances equal to spending appropriations. Local budget ordinances must show the estimated revenues, specified by source, from which expenditures are to be financed.

B. Debt financing.

1. The state and local governments may not borrow funds secured by the taxing power without the approval of a majority of voters, except in the following cases authorized by the Constitution: (1) to refund existing debt, (2) to meet unexpected revenue shortfalls, (3) to borrow in anticipation of revenue, (4) to suppress riots or insurrections or to repel invasions, (5) to meet emergencies threatening health or safety, and (6) borrowing involving an amount not exceeding two-thirds of the amount of debt retired in the preceding fiscal period.[36] Voter approval is not required when financing is not secured by the full faith and credit of the governmental unit, as in the case of revenue bonds, lease-purchase agreements, and other financing arrangements.

2. State capital construction projects are financed from current revenues (including unspent balances from the previous fiscal year) rather than from borrowed funds. State aid for school construction is financed from current revenues. Generally, the state borrows only to meet requirements of occasional, large-scale capital projects, such as prison construction mandated by the courts (in earlier decades the state borrowed to finance school construction aid and, on occasion, highway construction).

3. The Local Government Commission oversees local government borrowing, in accordance with the Local Government Bond Act[37] and other statutes.

[1] N.C. Constitution, Art. III, Sec. 5(10). "The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration."

N.C. Constitution, Art. VII, Sec. 1. "The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

[2] N.C. Constitution, Art. II, Sec. 1. "The legislative power of the state shall be vested in the General Assembly..."

The Constitution imposes special legislative procedures for tax legislation: "No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal." N.C. Constitution, Art. II, Sec. 23.

[3] N.C. Constitution, Art. IX, Sec. 2(1).

[4] N.C. Constitution, Art. IX, Sec. 2(2).

[5] N.C. Gen. Stat. § 115C-408(b).

[6] N.C. Gen. Stat. § 115C-81(a1).

"It is the intent of the General Assembly that until the Basic Education Program is fully funded, the implementation of the Basic Education Program shall be the focus of State educational funding. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local administrative unit by July 1, 1995." N.C. Gen. Stat. § 115C-81(a), as amended by 1991 N.C. Sess. Laws § 689, Sec. 196.

[7] 1991 N.C. Sess Laws § 689, Sec. 201.1 and Sec. 201.2.

[8] N.C. Constitution, Art. IX, Sec. 2(2).

[9] N.C. Gen. Stat. § 115C-408(b).

[10] 1987 N.C. Sess. Laws § 622 and § 813.

[11] N.C. Gen. Stat. § 105-487(a) and 105-502(a).

[12] N.C. Constitution, Art. IX, Sec. 8.

[13] N.C. Gen. Stat. § 115D-31 and -32.

[14] N.C. Gen. Stat. § 7A-300.

[15] N.C. Gen. Stat. § 7A-302.

[16] G.S. § 148-32.1 and G.S. § 15A-1352.

[17] N.C. Constitution, Art. II, Sec. 1.

[18] N.C. Constitution, Art. V, Sec. 2(6).

[19] N.C. Constitution, Art. V, Sec. 1.

[20] N.C. Constitution, Art. V, Sec. 2(2).

[21] U.S. Constitution, Art. VI (supremacy clause); N.C. Constitution, Art. V, Sec. 2(3).

[22] N.C. Constitution, Art. V, Sec. 2(2).

[23] N.C. Constitution, Art. V, Sec. 2(5).

[24] N.C. Gen. Stat. § 153A-149 and § 160A-209.

[25] Taxes will account for 97.2 per cent of total General Fund revenue in 1991-92. The total state budget of $13.6 billion in operating and capital appropriations will be

financed from the General Fund (57.5 per cent), highway funds (10.1 per cent), departmental receipts (8.6 per cent), bond financing (1.2 per cent), and federal funds (23 per cent). Fiscal Research Division of the North Carolina General Assembly, *Overview: Fiscal and Budgetary Actions, 1991 Session*, pages 5 and 14.

[26] N.C. Gen. Stat. § 105-134.6.

[27] N.C. Gen. Stat. § 105-134.2.

[28] The 1989 laws that converted the retail sales tax on vehicle sales to a highway use tax provided that annually an amount equal to the retail sales tax collections on vehicles be transferred to the General Fund. The Highway Fund, in addition to financing road construction and maintenance, also provides funds for such programs as the Highway Patrol and mass transit.

[29] Tax revenue, including state-shared tax revenue, accounted for 81.4 per cent of total county revenue and for 41.4 per cent of total municipal revenue in 1989-90. Utility revenue accounted for 1.4 and 41.4 per cent, respectively, of county and municipal revenue that year. Fiscal Research Division data.

[30] N.C. Constitution, Art. V, Sec. 7.

[31] N.C. Constitution, Art. III, Sec. 5(3).

[32] N.C. Constitution, Art. III, Sec. 5(3).

[33] N.C. Gen. Stat. § 143-1 through -34.7.

[34] G.S. §159-7 through -42.

[35] G.S. 115C, Art. 31.

[36] N.C. Constitution, Art. V, Sec. 3 and 4. The fiscal period of the state is a biennium of two fiscal years. The fiscal period of local governments is a fiscal year of 12 months beginning on July 1.

[37] G.S. § 159, Art. 4.

APPENDIX G

SALES TAX ON FOOD FOR HOME CONSUMPTION

A SUMMARY OF ISSUES AND OPTIONS FOR CHANGE

History

It's common to hear references to the "food tax" as beginning in 1961. That's when the General Assembly, upon recommendation from then-Governor Terry Sanford, repealed sales tax exemption for sales of food for home consumption. The increased revenues, estimated in 1961 at $50 million, were dedicated to improving public education programs.

However, a review of history reveals that specified food items have been taxed as early as 1933 when North Carolina first levied the sales tax. In that year, only flour, meal, meat, lard, milk, molasses, salt, sugar, and coffee, referred to as the "nine basic foods", were exempt from the tax. The 1935 General Assembly repealed these exemptions and taxed all foods. When the 1937 General Assembly returned they restored all the food exemptions listed in the 1933 law and added bread and rolls to the list. The 1941 General Assembly broadened that food exemption to include all food products sold for home consumption.

How does North Carolina tax food now?

All retail sales of food or food products are subject to the 4% state tax and the 2% local tax unless there is an exemption or an exclusion provided for in the statutes.

Exclusions are primarily sales for resale, or wholesale sales.

Current food-related exemptions from the sales tax and the year they were first enacted include:

1. Sales of products of farms, forests, and waters if sold in the original state by the original producer (1933)
2. Sales of lunches to school children when such sales are made within school buildings and are not for profit (1957)
3. Sales of meals and food products to students in dining rooms regularly operated by state or private educational institutions (1957)
4. Sales by blind merchants operating under the supervision of the Department of Human Resources (1957)
5. Sales of food to ocean-going ships in interstate commerce (1959)
6. Sales of meals to elderly or incapacitated persons by charitable or religious organizations when such meals are delivered to the home (1977)
7. Sales of food purchased solely for export to a foreign country for exclusive use in that country (1979)
8. Food purchased with coupons issued under the Food Stamp Program or the Special Supplemental Food Program (WIC vouchers) (1985)
9. Sales of food by a church or non-profit religious organization when the proceeds of the sales are used for religious activities (1990)

Experience in Other States

Of the 45 states that levy sales taxes, 26 states exempt food for home consumption. All states that levy sales taxes tax restaurant meals. Most Southeastern states tax food for home consumption; the exceptions are Florida, Kentucky, and Texas. The manner of administering food exemptions is not consistent across the states. This is because the definition of "food" varies from state to state. According to the National Conference of State Legislatures, the basic definition most states subscribe to is "Those items which are purchased in the grocery store and are not intended for immediate consumption". However, every state puts its own interpretive twist on that definition. Here are a few examples:

1. In Maryland, pizzas may or may not be taxed. Takeout-only businesses are exempt from sales tax, but food purchased for takeout at a restaurant is charged the sales tax.

2. In California, a Snickers candy bar is taxed, but a Snickers ice cream bar is not. Any ice cream product is considered a food and exempt from sales tax, while the candy bar is labeled a snack, and subject to the new "snack tax".

Although these examples appear inconsistent at first hearing, they are based on necessary generalizations made for regulatory purposes.

The more general the statutory language defining the exemption, the more necessity for state revenue departments to generate regulations on how to enforce the new exemption. The extent to which they are required to dedicate personnel and other resources to this task determines the administrative costs associated with the exemption.

Here in North Carolina, if an exemption for food for home consumption is enacted as it appeared prior to 1961, the Sales Tax Division of our Department of Revenue anticipates such administrative costs would be minimal. The main cost to the Department would be in the area of auditing merchants. They estimate the number of such merchants who would be affected by the exemption at 50,000 to 60,000. The Department's experience under the food exemption that was in the law until 1961 was that there were many misunderstandings on the part of merchants about what constituted exempt food and also there were record keeping problems that would necessitate more audit scrutiny of merchants who sell food. The impact of this shift in administrative emphasis would mean the Department would make fewer audits of other types of retail merchants unless the General Assembly authorizes additional personnel.

There is also a cost to the business community. Approximately 25% of all items sold in grocery stores are non-food items, such as household and beauty products. Grocery chains with scanners would have to determine which items qualify for the exemption and reprogram their central computers. From data supplied by the North Carolina Retail Merchants Association, a grocery chain with 800 store scanners estimates its reprogramming costs would be $4,000, but a smaller chain with only 5 store scanners estimates their cost would be $800.

Merchants with more traditional cash registers will have to devise compliance procedures that account for the limits of their equipment. For reporting and auditing purposes, merchants are required to separate their taxable and nontaxable sales at the time the sale is made.

Many merchants will have cash registers that are capable of accumulating taxable and nontaxable sales and applying the applicable tax. Some will have cash registers that only allow them to subtotal the taxable merchandise, add the tax, add the exempt items, and then produce a total, and a small percentage would have cash registers that cannot separate taxable and exempt sales at all. For these last two groups of merchants, there would be the additional cost of re-training existing personnel to recognize taxable versus exempt items on sight or through the use of a reference manual.

Regressivity of the Sales Tax

The sales tax exemption for food does reduce the regressivity of the state sales tax because poorer people spend a higher proportion of their income on food than those who are more affluent.

What are North Carolina's options?

1. Reinstate the exemption for food for home consumption.

   This would reduce the regressivity of the sales tax and most benefit low-income families who spend a larger proportion of their budget on food than high income families.

   The cost of this option is high, $308.9 million to the State General Fund, $154.5 million to local governments estimated for FY 93, and there is a cost to business that comes from reprogramming scanners and re-training personnel.

   Another consideration is the geographical pattern of the local revenue loss, which would affect rural areas to a greater extent than urban areas in the 1% point-of-origin distribution where more of the sales tax base is food .

2. Establish a food tax credit against the income tax for low-income households.

   Eight states currently do this.

   This approach would also reduce the regressivity of sales tax, reduce the cost to the State relative to a full exemption, and would not affect local sales tax revenues.

   The states who offer credits generally provide a flat amount (ranging between $30 and $50 for each personal exemption claimed for income tax purposes varying with the level of income. Hawaii is an exception; its credit is available to all taxpayers regardless of income. Two states that do not levy individual income taxes, South Dakota and Wyoming, administer separate credit programs for low-income senior citizens and disabled persons.

3. Reinstate the food tax exemption, but replace the revenue loss with new revenues. I'm going to briefly discuss three ways this could be done.

   a. Eliminate "loopholes" and preferential rates in the current sales tax law.

A loophole is in the eye of the beholder. Public officials responsible for balancing a budget may view a tax exemption as a loophole, while business associations are likely to insist the exemption is equitable and necessary to "create a level playing field".

Regardless of semantics, there are over 40 tax exemptions in the sales tax law. Most manufacturing and agricultural machinery are still taxed at 1% with an $80 cap. Boats and aircraft are taxed at 3% with a $1500 cap. The repeal of current exemptions and preferential rates would generate additional revenue that could be used to offset losses from a food exemption. In the 1991 Session, an exemption for sales made at state prison concessions was repealed, generating $400,000 in new revenues annually.

Here is a partial list (in $millions)

Exemption	*State*	*Local*
Interstate telecommunications	$6 million per 1% rate of tax State, $3 million per 1% local	
Manufacturing machinery (full 6% rate)	160.0	104.0
Spirituous liquor (state 4% only)	14.7	

A list of revenue estimates for other sales tax exemptions is included at the end of this paper.

b. Expand the sales tax base to include services

Particularly after Florida's and Massachusetts' experiences, it's understandable why other states would be reluctant to attempt to tax services. Few stories are written about recent successful efforts to tax services.

One example is Texas. In 1984, Texas expanded its sales tax base by 6.5% by taxing cable TV, newspapers, custom software, laundry and dry cleaning services, and general repair services (except cars). In 1987, another list of services was added to the sales tax, including landscaping services, credit reporting and debt collection, data processing, security services, information services, and insurance services (but not premiums).

Last year, Pennsylvania raised $119 million in revenue by taxing cleaning services, data processing and computer programming, credit reporting, building maintenance, personnel services, and lawn care services.

Discussions on taxing services in the 1991 Session generated the following revenue estimates for FY 93 (in $millions):

Service Type	*State*	*Local*
Accounting services	$18.8	$9.4
Legal services	31.2	15.6
General repair services	4.0	2.0
Data processing & computer programming	18.1	9.0
Cleaning, maintenance, & pest control	12.5	6.2

Also, a list of revenue estimates for taxing services is included at the end of this paper.

The third option for discussion here are value-added taxes. Although no state nor the Federal government has yet done this, the concept is intriguing.

VALUE-ADDED TAXES

Since they first appeared in the 1950s, more than 50 countries have adopted value-added taxes. Japan and Canada, the United States' largest trading partners, have imposed national VAT taxes within the last two years. The United States is now one of the few Western industrialized countries without a VAT and the only one without either a VAT or a national sales tax.

A value-added tax is a tax on consumption, and in that sense it is similar to a retail sales tax. Unlike a sales tax, however, the VAT is collected not on the final sale of a product to an end user, but is collected on the value each business adds to a product at each stage in the chain of production and marketing.

Although administration of a VAT can be structured in a variety of ways, most countries have chosen the credit method. Under this method, businesses charge the VAT on the value of their sales to consumers and other businesses, but they receive a credit for the VAT they pay on their purchases from other businesses. The credit refunds the tax on the value added at prior stages, making business purchases that are used in the production of other goods and services tax-free.

In practice, a VAT tax would not cover all goods and services. Other countries allow multiple tax rates and numerous tax preferences. Food, utilities, and transportation are taxed at a reduced rate, and housing and basic services are often taxed at a zero rate. Some goods are excluded from the base because of serious administrative problems in valuing and taxing them. Others are excluded to promote policy objectives such as limiting the tax burden on the poor, such as exemptions for food and medical care. A recent Congressional Budget Office study estimates approximately 75% of all goods and services could feasibly be taxed under a national VAT in the United States.

Most European countries allow exemptions for small businesses (with annual sales below $25,000) and for many service businesses (those providing medical, educational, financial, and charitable services).

The major disadvantage of a VAT is that it remains a regressive tax, similar to the retail sales tax. Lower-income families would continue to shoulder a greater burden of the tax than high-income taxpayers. The tax base could be adjusted by exempting food and health care, but this would not completely offset the heavier burden on the poor. Other disadvantages are that a VAT tax would be costly to administer and business associations maintain that it would be costly to maintain the additional records needed to satisfy audit requirements.

Although Senator Hollings of South Carolina proposed a VAT to lower the national deficit in 1989 and more recently Congressman Schulze proposed a VAT to replace the corporate income tax, none of these proposals have generated much support.

Senate Finance Committee
H. Warren Plonk
Fiscal Research Division
April 15, 1992

REVENUE PROJECTIONS FOR SALES TAX ON SELECTED SERVICES

($ MILLIONS)
TAX RATE 4%

	FY 92-93
Beauty and Barber	6.0
Advertising Agencies	4.0
Cleaning, Maintenance and Pest Control	12.5
Computer Programming and Data Processing	16.1
Detective Agencies	5.3
General Repair (Except Automotive)	4.0
Amusement and Recreation	6.0
Solid Waste Collection (Contract)	1.6
Management Consulting Services	5.0
Cable TV	15.7
Interstate Telecommunications	24.0
Offices of Doctors & Health Practitioners	105.1
Accounting, Auditing, Bookkeeping	18.75
Legal Services	31.1
TOTAL	**$255.15**

FISCAL RESEARCH DIVISION
REVENUE ESTIMATES FOR SELECTED SALES TAX EXEMPTIONS
April 15, 1992

Exemptions	FY 93 Cost	Date First Enacted
Commercial fertilizer, lime and land plaster	$6,650,000	1933
Seeds, feeds, insecticides, pesticides, fungicides, herbicides, and plant growth control chemicals	33,250,000	1945
Remedies, vaccines, medications	618,450	1979
Litter materials	400,000	1981
Building materials and equipment for commercial livestock producers	600,000	1986
Custom software	3,000,000	1983
Crutches, artificial limbs, orthopedic devices, false teeth and eyeglasses sold on prescription	5,054,000	1943
Medicines sold on prescription of physicians	52,136,000	1937
Medicines sold on prescription of veterinarians	400,000	1985
Public school books	8,778,000	1933
Printed material to be distributed outside the state	798,000	1983
Funeral expenses up to $1,500	3,458,000	1986
Sales by blind merchants supervised by DHR	200,000	1957
Lease/rental of films for exhibit	2,000,000	1941
Lease /rental of films or tapes to FCC regulated radio and TV stations	50,000	1957
Packaging materials sold as part of product	11,970,000	1957
Fuels and other items to ocean-going vessels	500,000	1959
Items sold on Cherokee Indian Reservation	365,750	1959
Public school lunches	5,453,000	1957
Food served to students in educational institutions	3,591,000	1957
Newspapers and magazines sold by street vendors and door-to-door carriers	6,650,000	1957
Art purchased by N. C. Museum of Art with donated money	25,000	1965
Food sold by religious non-profits when proceeds used for religious activities	40,000	1990
Property purchased for export to another country	500,000	1980
Sales by non-profits during annual fund-raising drives	1,330,000	1978
Printed material distributed with a newspaper	800,000	1983
Liquor	14,630,000	1985
Food purchased with food stamps or WIC vouchers	12,768,000	1985
Supplies used to produce shoppers guides	532,000	1985
TOTAL	**$176,538,200**	

State Exemptions for Food and Drugs

¶60-110

Of the forty-five states and the District of Columbia imposing sales and use taxes, twenty-six states and the District of Columbia currently provide exemptions for sales of food and forty-three states and the District of Columbia provide exemptions for sales of prescription drugs.

The exemptions for sales of food are quite broad, with the most common restrictions requiring that the food products be intended for human consumption away from the retailer's premises. Alcoholic beverages are generally excluded from the exemptions, and a few states exclude soft drinks or confections. All states tax the sale of meals.

There are many variations to state sales and use tax exemptions for sales of drugs. Commonly exempt are sales of prescription drugs, medicines and prosthetic devices. A few states do not require that exempt medicines be prescribed by a physician. Other states' exemptions include such items as eyeglasses, hearing aids, crutches, dentures, blood plasma, insulin and diabetics' supplies, and wheelchairs.

Some states also provide refunds of sales taxes paid on food or provide specific or general income tax credits to compensate taxpayers for such state and local taxes paid. The following chart indicates the states which currently exempt sales of "grocery store" food and/or drugs. (An "E" designates that such sales are exempt, and a "T" designates that such sales are taxable.)

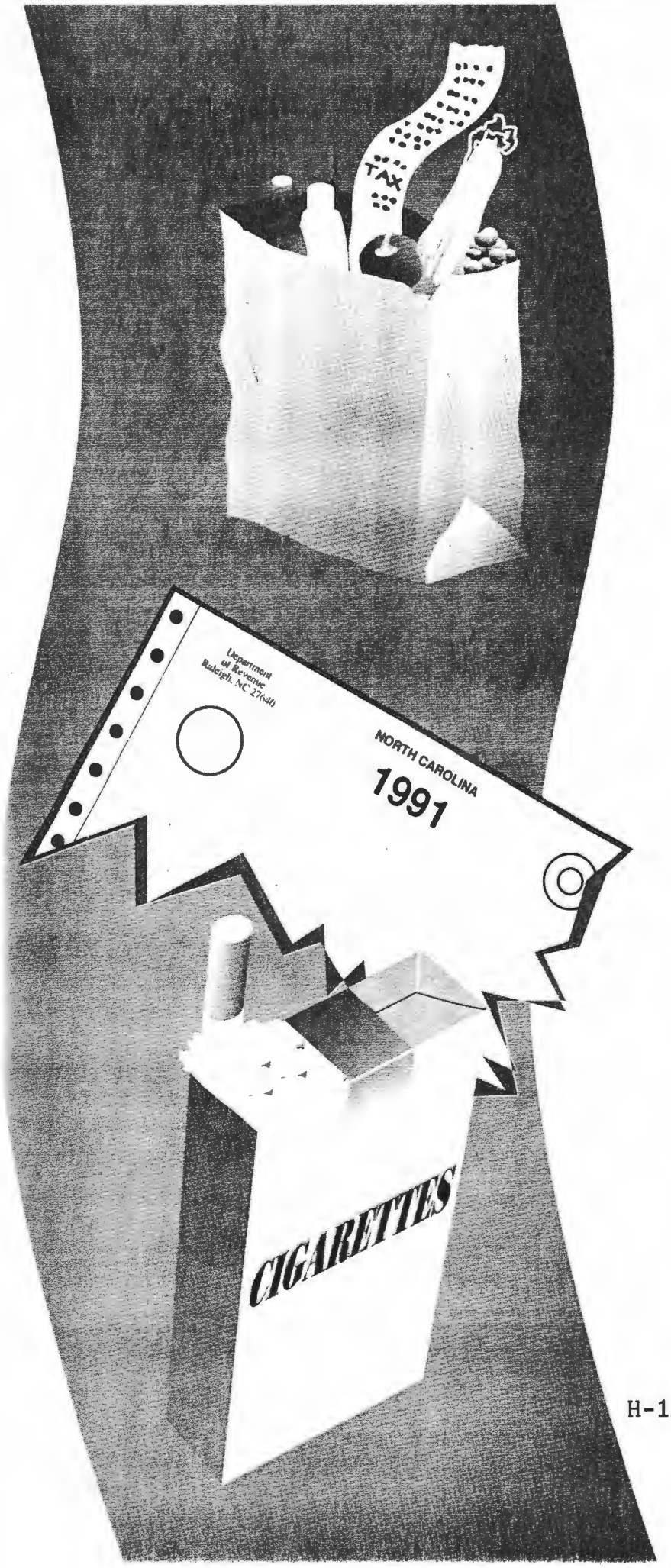
State	Food	Prescription Medicine	Nonprescription Medicine
Alabama	T	E	T
Arizona	E	E	T
Arkansas	T	E	T
California	E	E	T
Colorado	E	E	T
Connecticut	E	E	T
District of Columbia	E	E	E
Florida	E	E	E
Georgia	T	E	T
Hawaii	T	E	T
Idaho	T	E	T
Illinois	T[1]	T[1]	T[1]
Indiana	E	E	T
Iowa	E	E	T
Kansas	T	E	T
Kentucky	E	E	T
Louisiana	T[2]	E	T
Maine	E	E	T
Maryland	E	E	E
Massachusetts	E	E	T
Michigan	E	E	T
Minnesota	E	E	E
Mississippi	T	E	T
Missouri	T	E	T
Nebraska	E	E	T
Nevada	E	E	T
New Jersey	E	E	E
New Mexico	T	T	T
New York	E	E	E
North Carolina	T	E	T
North Dakota	E	E	T
Ohio	E	E	T
Oklahoma	T	E	T
Pennsylvania	E	E	E
Rhode Island	E	E	E
South Carolina	T	E	T
South Dakota	T	E	T
Tennessee	T	E	T
Texas	E	E	T
Utah	T	E	T
Vermont	E	E	T
Virginia	T	E	T[3]
Washington	E	E	T
West Virginia	T	E	T
Wisconsin	E	E	T
Wyoming	T	E	T

[1] Subject to a 1% tax.

[2] Subject to a 2% tax until July 1, 1992.

[3] Exempt, effective July 1, 1992.

APPENDIX H



Changes in North Carolina's Tax System: The Last Decade

Charles D. Liner

From the early 1930s, when major tax reforms were made, until the 1980s, North Carolina's tax structure remained relatively stable.[1] During the 1980s major changes were made in every major revenue source, including the retail sales tax, personal and corporate income taxes, the property tax, and the motor fuel tax. Now at the beginning of the 1990s additional major changes have been made—the 1991 General Assembly, in response to the worst budget crisis since the early 1930s, has increased rates on income and retail sales taxes. This article examines how North Carolina's revenue structure changed during the 1980s and how those changes and the 1991 changes affect taxpayers.

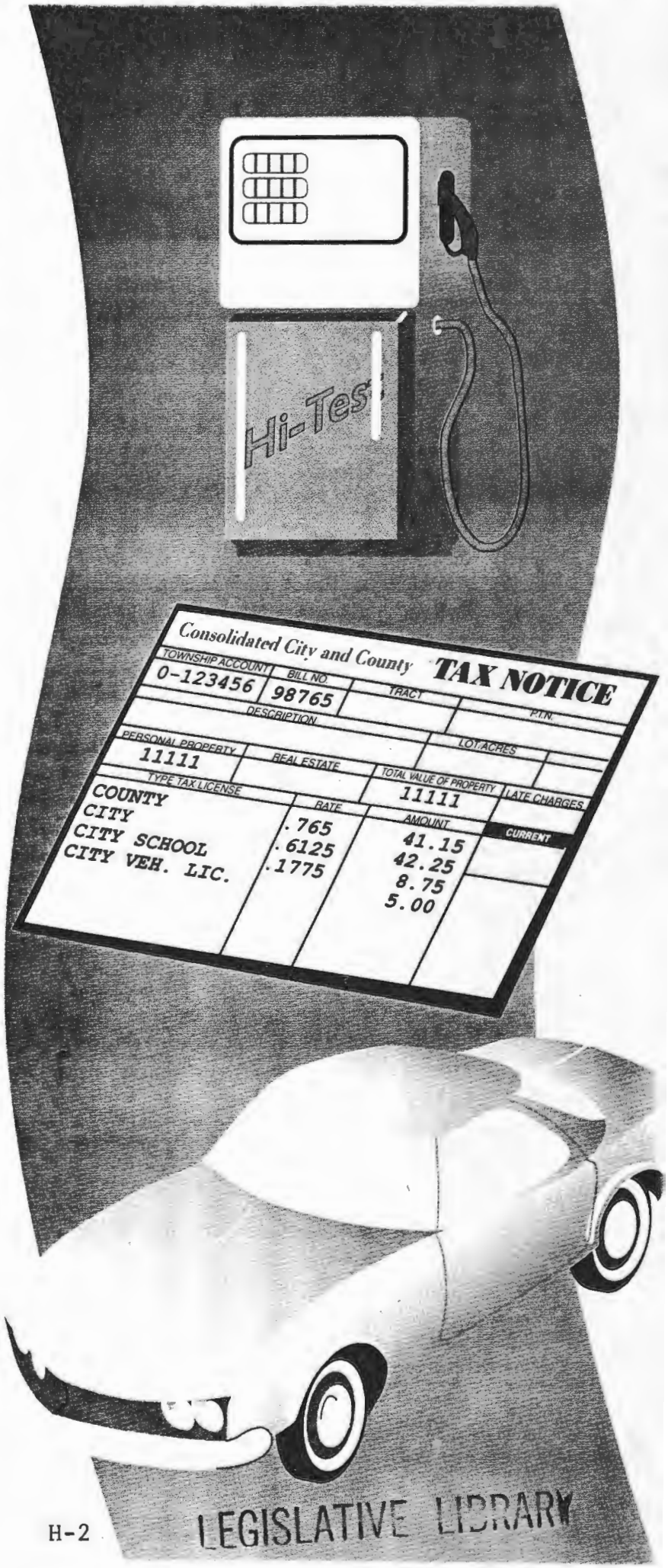
Background

First, it is important to look at the background against which those changes occurred by examining some major developments during this period:

- The 1980s brought a substantial reduction in the availability of federal funds, especially for local governments. The budget cuts in major federal grant programs during the early Reagan years were followed by a repeal of federal revenue sharing for local governments and a general retrenchment in the role of the federal government in programs administered by states and local governments.

The author is an Institute of Government faculty member who specializes in public finance. Illustrations by Michael Brady.

- In 1986 Congress reformed the federal corporate and personal income taxes. These reforms directly affected how North Carolina taxed corporations because the federal tax is the basis for the state corporate income tax, and in 1989 the General Assembly adopted the reformed federal definition of taxable income as the basis for the state personal income tax.
- In North Carolina the 1980s were marked by increased demand for public spending. These increased demands followed partly from normal growth in the state's population and income—population increased 11.9 percent and per capita income adjusted for inflation increased 39.6 percent between 1980 and 1989. But the greatest influences on spending were movements to improve the public schools and highways. These movements resulted in major new initiatives in education, such as the Basic Education Program enacted in 1985, increased teacher salaries, and the beginning of an ambitious highway construction program.
- Public finance policies during the 1980s were greatly influenced by the national economy and its effects on the state's economy. During most of the decade the nation was experiencing an unprecedentedly long boom in the national economy, and during the boom years the resulting growth in North Carolina's economy led to substantial growth in its tax base. But those good years were sandwiched between severe recessions at the beginning and end of the decade. North Carolina's commitment to multi-year spending programs, escalation in medical care costs, federal government and federal court mandates, together with the recession and other factors led to a severe budget crisis that has lasted from 1989 to the present. The budget crisis resulted in major budget cuts, retrenchment in spending programs, and further changes in the state's tax system in 1991.



Legislated Tax Changes

This section examines the more significant changes that the General Assembly has made since the 1979–80 fiscal year in the major revenue sources used by the state and its local governments.

Property Tax

In 1985 Governor James Martin proposed a major tax-cutting initiative that called for exempting intangible property and business inventories from the property tax

and exempting food purchases from the retail sales tax. The 1985 General Assembly responded by exempting some forms of intangible property—money on deposit, money on hand, funds on deposit with insurance companies, and credit balances with investment and securities firms—and provided an income tax credit for a portion of property taxes paid on business inventories. Food was not exempted from the retail sales tax, but food purchased with food stamps was exempted. In 1987, when the corporate income tax rate was raised to provide funds for school construction, the General Assembly exempted business inventories and certain agricultural inventories.

Tax Cut Reimbursements

When the General Assembly exempted some forms of intangible property from taxation in 1985, it compensated local governments by reimbursing them for lost revenue. These reimbursements were later increased to include compensation for revenues lost as a result of exempting business inventories from property taxation, exempting food purchased with food stamps from the retail sales tax, and increasing the property tax homestead exemption. These reimbursements became a significant revenue source for local governments, and by the end of the decade they claimed about $250 million in state revenue.[2]

Personal Income Tax

In the decades after the personal income tax was enacted in 1921, inflation eroded the value of personal exemptions so that low-income taxpayers were paying a tax that had originally been intended to fall only on those who had a substantial ability to pay.[3] The value of those exemptions was increased in 1979, and in 1985 a low-income credit was enacted to provide relief for low-income taxpayers. On the recommendation of a special tax study commission, in 1989 the General Assembly enacted legislation that based the North Carolina tax on taxable income as defined under the federal tax code. This substantially increased personal and dependent exemptions and the standard deduction, the result being that several hundred thousand low-income taxpayers were no longer liable for paying the state income tax, and tax liabilities of other lower-income taxpayers were reduced. The existing rate structure, comprising five rates varying from 3 percent to 7 percent, was replaced with two rates, 6 and 7 percent. The higher rate applied to taxable income over $21,250 for married couples filing jointly.[4] In 1991 a third tax rate of 7.75 percent was added. That rate takes effect at the taxable income of $100,000 for married couples filing jointly.[5]

Corporate Income Tax

As noted above, changes in the federal tax also affected how North Carolina taxed corporations because the federal definition of income was used as the basis for the state's tax. As a partial means to pay for a school construction initiative, the corporate tax rate was increased from 6 to 7 percent in 1987. However, that measure was part of a package of measures that included a business tax cut, the elimination of property taxes on business inventories. In 1991 the corporate income tax rate was increased to 7.75 percent (a temporary surtax also was added).

Retail Sales Tax

The rate of the combined state and local retail sales taxes was increased from 4 to 5 percent by two new half-cent local-option sales taxes enacted in 1983 and 1986. Unlike the previous one-cent local option sales tax enacted in 1971, the proceeds of which were returned to county and city governments in the county in which the taxes were collected, the proceeds of the new taxes were distributed according to each county's share of population. Thus these new taxes were more like a state revenue sharing scheme than a local tax. The reason is apparent from the implicit intent of the General Assembly in enacting the taxes. The revenues were intended to substitute in part for state aid for school construction and water and sewer facilities, and therefore counties were required to spend part of the proceeds for school construction, and cities were required to spend a portion for water and sewer facilities.

As noted earlier, food purchased with food stamps was exempted from the tax in 1985, and in 1987 the General Assembly repealed the 3 percent discount allowed merchants for collecting and remitting the tax. In 1989 the 2 percent rate on sales of motor vehicles was replaced with a 3 percent privilege excise tax on motor vehicles, the proceeds of which were to be used for highways (though a share of the proceeds was retained for a period in the General Fund). The maximum tax, which had been increased from $120 to $300 in 1983, was increased to $1,000; it will increase to $1,500 in 1993.

In 1991 the general rate of the state sales tax was increased from 3 to 4 percent, except that the rate on utility sales remained at 3 percent. This was the first increase in the state rate since the tax was enacted in 1933 (the only other major change had been repeal of the exemption of food sales in 1961). It brought the combined state and local retail sales tax rate to 6 percent.

Highway Taxes and Fees

In the early 1980s Highway Fund revenue collections suffered as a result of the increase in oil prices associated with the Iranian crisis. In 1981 the motor fuel tax was increased from 9 to 12 cents per gallon. Part of the increase was designated to increase the share going to cities (so-called Powell Bill funds). In 1986 the rate was increased from 12 to 14 cents per gallon and a new tax was enacted in the form of a 3 percent tax on the wholesale price. To implement an ambitious, multi-year highway construction program recommended by a blue ribbon commission, in 1989 the per gallon and wholesale price taxes were raised substantially, and today the two taxes are equivalent to 22.6 cents per gallon. Also, as mentioned above, the retail sales tax of 2 percent on motor vehicle sales (the proceeds of which went to the General Fund) was replaced with a privilege excise tax of 3 percent of sales price, to be used for the new highway construction program. In 1991 the 2 percent rate on boats and locomotives also was increased to 3 percent, and the basic motor fuel tax rate was increased from 17 to 17.5 cents per gallon, effective January 1, 1992.

Growth in Taxes

Table 1 shows the percentage changes in inflation-adjusted (or constant-dollar) per capita revenue in North Carolina between fiscal years 1979–80 and 1988–89 (the last year for which consistent data are available). This growth can be compared with growth in constant-dollar per capita personal income in North Carolina during the same period (39.6 percent) and with corresponding changes for the nation as a whole. *Total revenue*, as defined in the Census reports, includes revenue received for utility enterprises (such as water, electricity, or transit systems), insurance trust fund revenue (such as unemployment insurance receipts), and liquor store receipts. *General revenue* excludes these items because it is intended to reflect revenue available for general governmental uses.

Table 1
Changes in Constant-Dollar Per Capita Revenue between Fiscal Years 1979–80 and 1988–89

	Percentage Change				
	Total State & Local	State	Local	Counties	Municipalities[a]
North Carolina					
Total revenue	43.1%	35.9%	55.3%	52.8%	14.2%
General revenue, total	36.6	34.0	46.4	58.5	3.6
From federal government	–9.7	5.0	–55.2	–66.9	–76.7
From taxes and charges	45.9	41.5	55.0	–	–
Taxes	46.3	42.7	56.3	63.6	18.5
Charges	43.7	32.6	52.2	–	–
United States					
Total revenue	34.2	35.0	30.9	35.9	–
General revenue, total	30.6	31.3	28.1	34.5	–
From federal government	–3.7	11.1	–47.1	–67.3	–
From taxes and charges	36.0	33.5	39.3	–	–
Taxes	33.3	32.1	35.7	–	–
Charges	49.7	48.2	50.6	–	–

[a]Based on municipal population rather than statewide population.

Source: U.S. Department of Commerce, Bureau of the Census, *Governmental Finances*, annual.

The figures in Table 1, all of which refer to inflation-adjusted per capita amounts, may be summarized as follows:

- In inflation-adjusted dollars, per capita total revenue of North Carolina's state and local governments increased slightly more than per capita personal income (43.1 versus 39.6 percent). But per capita general revenue (which excludes insurance trust, liquor store, and utility revenue) increased slightly less than per capita income (36.6 versus 39.6 percent).
- The components of general revenue are federal aid, revenues from taxes and current charges, and miscellaneous revenue. In constant dollars per capita, federal aid fell 9.7 percent, while miscellaneous revenue increased 139 percent. Constant-dollar per capita revenue from taxes and current charges combined increased 45.9 percent. Thus revenue from taxes and current charges combined increased slightly as a per-centage of state personal income—from 13 percent to 13.6 percent. Growth in revenue from North Carolina state and local tax sources alone increased 46.3 percent, while revenue from current charges (including user charges, fees, and tuition) increased 43.7 percent. The growth in revenue from current charges is attributable mainly to increases in hospital charges:

Table 2
Changes in Constant-Dollar Per Capita Revenue from Major Revenue Sources between Fiscal Years 1979–80 and 1988–89

	Percentage Change	
	North Carolina	United States
Motor fuel taxes	28.6%	21.1%
Property taxes	31.2	26.6
Personal income taxes	59.9	39.5
Corporate income taxes	68.4	16.6
Retail sales taxes	76.8	96.4
Utility fees	171.5	50.4

Source: U.S. Department of Commerce, Bureau of the Census, *Governmental Finances*, annual.

education charges increased 27.1 percent, while hospital charges increased 75.9 percent.

- Growth in general revenue was substantially greater for local governments than for the state government. Whereas state general revenue increased 34 percent, local government general revenue increased 46.4 percent (58.5 percent for counties and 3.6 percent for municipalities).
- Constant-dollar per capita revenues received by local governments from the federal government fell by half—55.2 percent. In fact, the actual amount of federal funds received by local units fell from $476 to $342 million between fiscal years 1979–80 and 1988–89, a drop of 28 percent. For counties, constant-dollar per capita revenue from the federal government fell 66.9 percent, while for municipalities the drop was 76.7 percent (based on municipal, not statewide, population). These declines were offset by a substantial increase in constant-dollar per capita federal dollars for special districts, an increase that most likely reflects increased federal funds for health care. Federal revenues received by the state government increased 5 percent.
- Revenue from North Carolina taxes increased 46.3 percent. Local tax revenue increased more than state tax revenue (56.3 versus 42.7 percent). County tax revenue increased 63.6 percent, while municipal revenue increased 18.5 percent.

Table 2 shows growth in constant-dollar per capita income from the major revenue sources. The largest growth in North Carolina was in utility fees (171.5 percent), retail sales tax collections (76.8 percent), corporate income tax collections (68.4 percent), and personal income tax collections (59.9 percent). Property tax revenue increased 31.2 percent and motor fuel tax collections increased 28.6 percent.

The result of these varying growth rates was that the composition of revenues from these sources changed significantly. Utility fees increased from 11.4 to 18.5 percent of the total; of the other sources only retail sales tax collections increased as a percentage of the total. If we consider only the tax sources, the property tax fell from 27.4 to 23.3 percent of the total and motor fuel tax revenue fell from 8.1 to 6.7 percent. Retail sales tax collections increased from 24.3 to 27.9 percent, while revenues from the personal and corporate income taxes increased slightly.

Effects of Tax Changes on Taxpayers

Practically all taxpayers, including both individuals and businesses, were affected significantly by the tax changes discussed above. The combined state and local retail sales tax rate increased by 50 percent—from 4 to 6 percent (though the rate on utility sales remained at 3 percent). The sales tax rate on vehicle purchases also increased 50 percent—from 2 to 3 percent—and the cap was raised significantly (also, the sales tax rate was made to apply to used car purchases). On the other hand, low-income families that purchased food with food stamps were exempted from the retail sales tax on those purchases. The motor fuel tax increased from 9 cents per gallon to the equivalent of 22.6 cents per gallon.[6] Some taxpayers were affected by several increases in alcohol-related taxes and the 1991 increase from 2 to 5 cents per pack in the cigarette tax rate.

The reform of the personal income tax in 1989 removed thousands of low-income taxpayers from the tax rolls and reduced tax liabilities of lower-income families. The effect on middle- and upper-income families depended on their income level and the type of deductions they were entitled to before the changes. The tax rate of 7.75 percent added in 1991 of course affected only upper-income taxpayers—for example, married couples with a taxable income exceeding $100,000.

Businesses also were affected by increased sales and excise tax rates, but the largest change in taxation of businesses came from changes in the corporate income tax and the property tax on inventories. The corporate income tax rate was increased from 6 percent to 7 percent in 1987. That increase was offset to some extent by the simultaneous repeal of property taxes on business inventories and partial repeal of taxes on intangible property (which also affected some individuals). And

in 1991 the corporate income tax rate was increased to 7.75 percent.

The crucial question about recent tax changes, from the standpoint of public policy, is whether the changes had the effect of making North Carolina's tax structure more fair or less fair. The term fairness refers to the principle that the burden of taxes levied to support government services that provide general benefits should be related to an individual's ability to pay, and that the net burden of all taxes and charges should also be related to ability to pay, as measured by income. When tax burdens as a percentage of income rise with income, we say the tax burdens are progressive. and when tax burdens fall as income increases, we say that tax burdens are regressive. Fairness requires that tax burdens should be at least proportional to income, and many believe that fairness requires that the net burden rise progressively with income.

Unfortunately it is difficult, both for conceptual and practical reasons, to estimate the effect of taxes or tax changes on tax burdens at different income levels. We can make rough estimates of the amount of direct taxes, like sales and income taxes, paid by individuals. But who bears the final burden of taxes paid by businesses? Businesses whose taxes are increased may try to offset those increases by raising prices, but whether or not they can do so without consequential changes in profits depends upon the circumstances of the industry they operate in and market conditions they face. Firms that increase prices to offset higher taxes may see a reduction in sales and profits, particularly if they operate in very competitive industries, and therefore they may not be able to pass all tax increases on to their customers in the form of higher prices.

Although it is not feasible to estimate the total effects of recent tax changes, it is possible to gauge, at least roughly, the effects of changes in the major taxes that fall directly on families and individuals. Table 3 shows estimates of the taxes that would have been paid by four representative families with different levels of income in 1990. The effect of the major tax changes is shown by calculating the taxes estimated to have been paid in 1990 and comparing those amounts with the amounts that would have been paid on 1990 income if 1980 tax provisions were still in effect and with the amounts that would have been paid if the 1991 tax changes had been in effect.

As Table 3 shows, the 1989 changes in North Carolina's personal income tax reduced income tax liability substantially for the representative family with an income of $15,000. Under 1980 laws that family would have paid $215 in taxes on 1990 income, or 1.4 percent of its gross income. Under 1990 laws the family would have owed only $108, or 0.7 percent of its income. The 1989 changes had little effect on the other families. However, that result might have been different if this exercise had included a family that before the change took advantage of various tax deductions eliminated by the changes, such as those commonly accrued to investors in tax shelter schemes. In any event, the 1989 reform of North Carolina's income tax increased the progressivity of the tax by reducing or eliminating income taxes previously imposed on lower-income taxpayers.

All the representative families were affected significantly by the increases in rates of the retail sales and motor fuel taxes. As the table demonstrates, these taxes are regressive—they fall disproportionately on lower-income families. For example, under 1991 laws estimated retail sales taxes represent 2.5 percent of income for the lowest-income family but only 1.5 percent for the highest-income family. (User charges and fees. which are not analyzed here, also are regressive.)

What was the net result of the income tax reform, which made the income tax more progressive, and the increased rates on the regressive retail sales and motor fuel taxes? As Table 3 shows, the total tax liability under the income, retail sales, and motor fuel taxes increased substantially for all families. The total tax liability for the family with 1990 income of $15,000 was 20 percent higher under 1991 laws than under 1980 laws. This change reflects the fact that increased sales and motor fuel tax rates were partly offset by income tax reductions. For the other families, the corresponding percentage changes declined as income increased—the increase was 34 percent for the family with income of $25,000, 23 percent for the family with income of $40,000, and 15 percent for the family with income of $75,000. Thus the increase was relatively less for higher-income taxpayers because they spend proportionately less of their income on items subject to the sales and motor fuel taxes.

The relative effects of these changes can be seen in the table's figures that show for each family the ratio of the combined taxes as a percentage of income to the corresponding percentage for the highest-income family. For the family with income of $15,000. the income tax reform offset somewhat the effects of the other increases, so that its percentage relative to the percentage for the highest-income family increased only slightly

Table 3
Estimated Retail Sales, Income, and Motor Fuel Taxes of Four Representative Families under 1980, 1990, and 1991 Tax Laws

	Estimated Taxes on 1990 Income				As Percentage of Income			
	$15,000	$25,000	$40,000	$75,000	$15,000	$25,000	$40,000	$75,000
1990 tax liability under 1980 laws:								
Personal income tax	$215	$573	$1,254	$3,012	1.4%	2.3%	3.1%	4.0%
Retail sales tax[a]	253	392	474	743	1.7	1.6	1.2	1.0
Motor fuel tax	56	93	135	154	0.4	0.4	0.3	0.2
Total	524	1,058	1,863	3,909	3.5	4.2	4.7	5.2
Percentage relative to that of highest-income family[b]					67.3	80.8	90.4	100.0
1990 tax liability under 1990 laws:								
Personal income tax	108	599	1,247	3,008	0.7	2.4	3.1	4.0
Retail sales tax[a]	317	490	593	928	2.1	2.0	1.5	1.2
Motor fuel tax	135	222	322	368	0.9	0.9	0.8	0.5
Total	560	1,311	2,162	4,304	3.7	5.2	5.4	5.7
Percentage relative to that of highest-income family[b]					64.9	91.2	94.7	100.0
1990 tax liability under 1991 laws:								
Personal income tax	108	599	1,247	3,008	0.7	2.4	3.1	4.0
Retail sales tax[a]	380	587	711	1,114	2.5	2.3	1.8	1.5
Motor fuel tax	142	233	338	387	0.9	0.9	0.8	0.5
Total	630	1,419	2,296	4,509	4.2	5.7	5.7	6.0
Percentage relative to that of highest-income family[b]					70.0	95.0	95.0	100.0
Percentage difference in estimated taxes under 1980 and 1991 laws	20.2%	34.1%	23.2%	15.3%				

[a]The calculated amounts include retail sales taxes on utility sales. In 1984 the state franchise tax on utility sales was converted to a 3 percent retail sales tax. Because this was merely a shift in the form of the tax, it would be misleading not to calculate retail sales taxes on utility sales.

[b]Ratio of total percentage for each family to the total percentage for the family with a $75,000 income.

Source: Income and spending figures are based on U.S. Department of Labor Consumer Expenditure Survey. "Representative family" assumes a married couple having two children, owning their home, and receiving all income from wages and salaries. It was assumed that none of the families purchased a vehicle.

(an increase from 67 to 70 percent). For the other families, the effect was to make tax burdens in this income range less progressive. For example, consider the family with $25,000 income. The estimated taxes as a percentage of this family's income, 4.2 percent, increased from 81 percent of the corresponding percentage for the highest-income family to 95 percent, when tax liabilities under the 1980 and 1991 laws are compared. Similarly, the corresponding ratio for the family with $40,000 income increased from 90 percent to 95 percent. In other words, although the regressive effect of increasing retail sales and motor fuel tax rates was offset by income tax changes for the lowest-income families, those increases caused the combined burden of these major taxes to be less progressive than before for taxpayers with moderate incomes.

Unfortunately we cannot provide estimates for two important classes of taxpayers, the very poor and the very well-to-do, because the data needed are not available. For the poorest taxpayers, increased retail sales and motor fuel taxes would not have been offset by income tax changes, because they would not have been liable for income taxes even under 1980 laws. However, they might have benefited from the exemption from retail sales taxes of food purchased with food stamps. For upper-income taxpayers, the 1991 changes, by increasing the tax rate from 7 to 7.75 percent on incomes above $100,000 (for married couples filing jointly), would have partly offset

the relative advantage they enjoyed from increased sales and motor fuel tax rate increases.

Conclusion

After having remained relatively stable for more than half a century, North Carolina's tax structure underwent substantial changes during the past decade. That decade was a turbulent one for state and local government finances. It began with high inflation, followed by a severe recession. That recession was followed by an unprecedented expansion in the national economy, which in turn was followed by a recession that caught most states, including North Carolina, in a severe fiscal bind. The decade also brought a major shift in fiscal responsibility from the federal government to states and local governments. That shift began with President Reagan's 1981 program of tax cuts and federal aid cutbacks, including the end of federal revenue sharing. The federal deficit placed a stranglehold on federal aid for the rest of the decade. Thus it was left to states and local governments to cope with fiscal pressures created by escalating costs, federal mandates, and demands for improving schools and highways.

As we have seen, growth in state and local government general revenue in North Carolina was about in line with growth in personal income in the state. But revenue from the federal government, in inflation-adjusted dollars per capita, declined almost 10 percent, and in the same terms federal aid to North Carolina local governments was cut in half. The net result was that inflation-adjusted per capita revenue from taxes and from current charges increased more than state personal income.

Tax increases came mainly in the form of substantial rate increases in the retail sales, gasoline, and corporate income taxes. Utility charges and health care charges also increased greatly, and, although not documented here, there appears to have been a general trend toward greater use of user charges and fees. Although this article did not analyze changes in property tax rates, Table 2 shows that property tax revenue grew less than other tax revenue (except for motor fuel tax revenue). Property taxes paid by businesses were reduced by elimination of the property tax on business inventories. Although the 1989 reform of the state's personal income tax, the largest of all tax sources, reduced income taxes for taxpayers with low and moderate incomes, revenues from that tax also increased substantially more than state personal income (Table 2).

The analysis of changes in the retail sales, motor fuel, and personal income taxes suggests that the net result was to make the state's tax system less progressive. That is, increased sales and motor fuel taxes were regressive in that the increases were relatively greater for lower-income taxpayers than for higher-income taxpayers. This regressive effect was offset in part for low-income taxpayers whose income tax liabilities were reduced by the 1989 income tax reforms. The regressive effect also was countered to some extent by the 1991 increase in income tax rates on high-income taxpayers. And increases in the corporate income tax rate were counter to a long-term trend that has reduced the proportion of tax revenue coming from businesses and increased the proportion coming from individuals and consumers. ❖

Notes

1. Charles D. Liner. "Providing Government Services: State and Local Government Responsibilities in North Carolina." *Popular Government* 51 (Spring 1985): 2–7.

2. These reimbursements in effect amount to a state revenue sharing scheme in which state revenues are distributed according to the amount of revenues local units once received from taxes that have been repealed or modified. Local officials have complained that they are not being reimbursed for the revenue growth that would have occurred without the changes. They claim that the effect of the reimbursements has been to substitute a nongrowing revenue source for growing revenue sources.

3. Charles D. Liner, "The Erosion in Value of Exemptions and Tax Brackets of North Carolina's Personal Income Tax," *Popular Government* 54 (Fall 1988): 33–40.

4. The higher rate takes effect at $17,000 for heads of household, $12,750 for single taxpayers, and $10,625 for married persons filing separate returns.

5. It takes effect at $80,000 for heads of household, $60,000 for unmarried persons, and $50,000 for married spouses filing separately.

6. This figure represents the combined effect per gallon of the per gallon and wholesale rate for the last half of 1991. The wholesale rate is adjusted every six months.