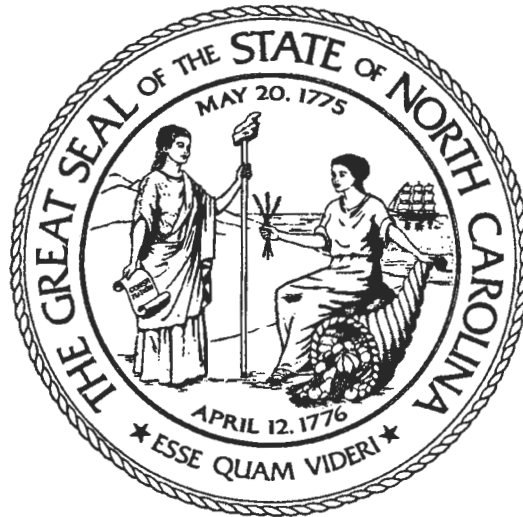


**LEGISLATIVE  
RESEARCH COMMISSION**

---

**REVENUE LAWS STUDY COMMITTEE**



**REPORT TO THE  
1993 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

**A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE  
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.**

**ROOMS 2126, 2226  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27611  
TELEPHONE: (919) 733-7778**

**OR**

**ROOM 500  
LEGISLATIVE OFFICE BUILDING  
RALEIGH, NORTH CAROLINA 27603-5925  
TELEPHONE: (919) 733-9390**

## TABLE OF CONTENTS

Letter of Transmittal.....	1
Legislative Research Commission Membership List.....	2
Preface.....	3
Committee Proceedings.....	4
Committee Recommendations and Legislative Proposals.....	10
1. AN ACT TO LOWER THE MINIMUM HIGHWAY USE TAX.....	11
2. AN ACT TO EXEMPT CERTAIN TRANSFERS OF VEHICLES FROM THE HIGHWAY USE TAX.....	16
3. AN ACT TO MAKE MOBILE CLASSROOMS AND MOBILE OFFICES SUBJECT TO SALES TAX RATHER THAN HIGHWAY USE TAX AND TO EXEMPT CERTAIN MOBILE CLASSROOMS FROM SALES TAX.....	21
4. AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER.....	26
5. AN ACT AUTHORIZING NONRESIDENT TAXPAYERS TO CLAIM THE TAX CREDIT FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES.....	37
6. AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME TAX RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH CAROLINA SOURCES.....	41
7. AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS.....	47
8. AN ACT TO REINSTATE AN INADVERTENTLY DELETED PROVISION RELATING TO ASSESSMENTS FOR EMPLOYER WITHHOLDING BASED ON FEDERAL DETERMINATIONS AND TO CLARIFY THE ASSESSMENT STATUTES.....	53
9. AN ACT TO MAKE CONFORMING CHANGES TO THE LAW PROVIDING FOR INDIVIDUAL INCOME TAX ADJUSTMENTS AND TO PROVIDE THAT EXPENSES PAID IN CONNECTION WITH INTEREST EARNED ON OBLIGATIONS ARE DEDUCTIBLE FROM AN INDIVIDUAL'S TAXABLE INCOME TO THE EXTENT THE INTEREST IS TAXABLE.....	65

10. AN ACT TO RESTORE THE STATUTORY AUTHORITY TO TAX THE NORTH CAROLINA INCOME OF NONRESIDENT ALIENS.....	73
11. AN ACT TO PROVIDE THAT THE STATE SHALL PAY INTEREST ON INCOME TAX REFUNDS NOT REFUNDED TO THE TAXPAYER WITHIN 45 DAYS AFTER THE RETURN WAS FILED OR DUE TO BE FILED, WHICHEVER IS LATER.....	79
12. AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY EXTENDING THE EXISTING TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS TO APPLY TO INVESTMENTS BY PARTNERSHIPS .....	86
13. AN ACT TO MAKE THE RULES FOR AN INTANGIBLES TAX FILING EXTENSION THE SAME AS FOR AN INDIVIDUAL INCOME TAX FILING EXTENSION.....	91
14. AN ACT TO PROVIDE THAT THE PENALTY FOR FAILURE TO FILE AN INHERITANCE TAX RETURN WILL BE ASSESSED AND COLLECTED IN THE SAME MANNER AS THE PENALTY FOR FAILURE TO PAY INHERITANCE TAXES .....	97
15. AN ACT TO ESTABLISH A STATEWIDE PROGRAM TO IMPROVE THE COLLECTION OF ACCOUNTS RECEIVABLE BY THE STATE .....	102
16. AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES .....	110
17. AN ACT TO PROVIDE THAT A SALES TAX LICENSE IS VOID IF THE RETAILER REPORTS NO SALES FOR EIGHTEEN MONTHS .....	131
18. AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING STATE SALES AND USE TAXES.....	136
19. 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 FROM THE PROHIBITION .....	142
20. AN ACT TO REGULATE PROPERTY TAX REPRESENTATIVES AND CONSULTANTS .....	164
21. AN ACT TO REQUIRE A FILING FEE ON APPEALS TO THE PROPERTY TAX COMMISSION. ....	171

22. AN ACT TO PROHIBIT DELIVERY OF NONTAXPAID SPECIAL FUEL INTO THE SUPPLY TANK OF A MOTOR VEHICLE AND ACQUISITION OF NONTAXPAID SPECIAL FUEL FOR USE IN A MOTOR VEHICLE ..... 175

23. AN ACT TO MODIFY THE REQUIREMENTS FOR LICENSURE AS A MOTOR VEHICLE WHOLESALER OR DEALER, TO LIMIT THE NUMBER OF MOTOR VEHICLE DEALER LICENSE PLATES THAT CAN BE ISSUED TO THE SAME DEALER, TO EXPAND THE USE OF TRANSPORTER PLATES, AND TO CHANGE THE FEE FOR TRANSPORTER PLATES ..... 180

24. AN ACT TO ALLOW ALL TRAILERS TO OBTAIN MULTIYEAR LICENSE PLATES, TO ALLOW OWNERS OF HORSELESS CARRIAGES TO OBTAIN MULTIYEAR LICENSE PLATES, TO CLARIFY THE DEFINITION OF SEMITRAILER, AND TO MAKE ADMINISTRATIVE CHANGES TO THE LAWS CONCERNING SPECIAL LICENSE PLATES..... 196

25. A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF NORTH CAROLINA..... 209

Appendices

A. Authorizing Legislation

    Part II, Chapter 754, 1991 Session Laws.....A-1

    House Joint Resolution 7, 1991 Session .....A-7

B. Membership and Staff of the Revenue Laws Study Committee.....B-1

C. Disposition of Committee Recommendations to 1992 Session.....C-1

D. Request for Proposals, Comparative Bank Tax Study .....D-1

E. Federal Tax Treatment of Banks' Interest Expenses Allocable to Tax-Exempt Income, Remarks of Steve Glickstein, Office of the Chief Counsel, Internal Revenue Service .....E-1

F. Holding Companies and Expense Attribution to Nontaxable Income, by Ruth Sappie, Fiscal Research Division .....F-1

G. Privilege License Taxes and Principles of Taxation, by Charles D. Liner, Institute of Government .....G-1

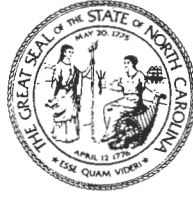
H. Speakers at Committee Meetings .....H-1

I. Federal Tax Changes Affecting State Income Tax .....I-1

J. United States Tax Treaties, I.R.S. Publication 901 .....J-1

K.	Legislative Fiscal Staff Access to Tax Returns and Information, Memorandum from Secretary of Revenue J. Ward Purrington .....	K-1
L.	Opinion of Attorney General, Senate Bill 369 .....	L-1
M.	Sales Tax on Food for Home Consumption: A Summary of Issues and Options for Change, by Ruth Sappie, Fiscal Research Division .....	M-1
N.	<u>Changes in North Carolina's Tax System: The Last Decade,</u> <u>by Charles D. Liner, Institute of Government .....</u>	N-1

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



January 15, 1993

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY (REGULAR SESSION,  
1993):

The Legislative Research Commission submits to you for your consideration its final 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,

A handwritten signature in cursive script, appearing to read "Daniel T. Blue, Jr.", written over a horizontal line.

Daniel T. Blue, Jr.  
Speaker of the House

A handwritten signature in cursive script, appearing to read "Henson P. Barnes", written over a horizontal line.

Henson P. Barnes  
President Pro Tempore of the Senate

Cochairs  
Legislative Research Commission





1991 - 1992

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of  
the Senate  
Henson P. Barnes, Cochair

Speaker of the House of  
Representatives  
Daniel T. Blue, Jr., Cochair

Senator Frank W. Ballance, Jr.

Rep. Marie W. Colton

Senator Howard F. Bryan

Rep. W. Pete Cunningham

Senator J. K. Sherron, Jr.

Rep. E. David Redwine

Senator Lura Tally

Rep. Frank E. Rhodes

Senator Russell G. Walker

Rep. Peggy M. Stamey



## 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. The Committee recommended sixteen bills in its interim report to the 1992 Session of the 1991 General Assembly. Fourteen of these recommendations were enacted in 1992, although some were modified before enactment. Appendix C lists the recommendations and the action taken on them during the 1992 Session.

The Committee held five meetings after the 1992 Session, including two two-day meetings. The Committee devoted much of its time to a study of the State's income taxes on banks and holding companies; during the 1992 Session the House Finance Committee had asked the Revenue Laws Study Committee to investigate this topic. The Committee also studied whether to renew its recommendations of earlier proposals that had not been enacted: highway use tax changes, a merchant's discount for collecting and remitting sales taxes when due, payment of taxes by electronic funds transfer, and other proposals. The Committee was inundated with requests from legislators, taxpayers, the Department of Revenue, other State agencies, local governments, and interest groups to study numerous issues of tax policy and tax administration. To accommodate these requests, the Committee extended its normal meeting calendar, but it was unable to take up all of the issues suggested to it. Among the topics it studied were whether to establish a statewide accounts receivable program to be administered by the State Controller, how to reduce or eliminate the abuse of motor vehicle dealer license plates and retail sales tax licenses, whether the State should require occupational licensing of property tax appeal representatives and charge a fee for property tax appeals, how to expand and clarify the tax secrecy statutes, whether to repeal the State's privilege license taxes, whether to change payment of the cigarette excise tax from a stamp basis to a reporting basis, and whether to tax income of nonresident aliens and income of foreign corporations that do not have a permanent establishment in the United States.

### -----Taxation of Banks and Holding Companies

Representative John Gamble introduced House Bill 1355 during the 1992 Session of the 1991 General Assembly. House Bill 1355 would have done two things: (i)

eliminated a special rule that allows banking corporations to deduct interest expenses incurred in generating tax-exempt income; and (ii) eliminated ambiguous language that has been interpreted to allow holding companies to deduct expenses incurred in generating exempt income and deductible dividend income. House Bill 1355 was debated in the House Finance Committee and then referred to the Revenue Laws Study Committee for study and recommendations. The co-chairs of the Committee directed staff to identify the various questions of law, fact, and policy that would need to be answered to enable the Committee to evaluate the merits of House Bill 1355.

The Committee separated the two issues raised by House Bill 1355, one relating to banks and the other to holding companies, and studied them separately. With respect to the banking issue, the Committee determined that several questions regarding the taxation of banks, particularly comparisons between North Carolina and other nearby states as well as states with tax structures similar to that of North Carolina, should be referred to a tax accounting expert who would act as a consultant. The Committee originally intended to have the results of this study by mid-November, so that it could consider the study, receive input from staff, experts, and interested parties, and debate the issue in time to make a recommendation in its report. The Committee's efforts to contract to have the study performed were, however, unsuccessful.

The Committee's original request for proposals, circulated to the major accounting firms, yielded only one proposal. The Committee had awarded the contract to the proposing firm based on a modified version of its proposal when the firm withdrew its proposal. The firm gave no reason for withdrawing its proposal. The Committee then began the bidding process anew, circulating a new request for proposals to over 150 potential consultants. The Committee received three acceptable proposals, each of which was in the form of a binding offer to contract. The Committee accepted the lowest bid on November 25, 1992. On December 8, 1992, however, the firm to whom the contract had been awarded notified the Committee that it would not perform the contract because of an asserted conflict of interest. A copy of the Committee's second request for proposals is Appendix D of this report.

Because the bank tax change proposed by House Bill 1355 would have adopted the federal treatment of banks' expenses related to producing tax exempt income, the Committee invited a representative of the Internal Revenue Service to brief the Committee on the federal law. At the Committee's November meeting, Steve Glickstein of the Office of the Chief Counsel, United States Internal Revenue Service, spoke to the Committee about the history of the federal treatment of banks' expenses

related to producing tax exempt income, the change in 1986 from a rule similar to North Carolina's current law to a rule disallowing the expenses, and policy reasons for the federal change. Mr. Glickstein also gave a detailed technical explanation of how the federal law works and pointed out administrative issues and potential questions that North Carolina may want to address if it does adopt the federal approach. Appendix E of this report is a transcript of Mr. Glickstein's remarks to the Committee and the questions and answers following his remarks.

In order to evaluate the holding company proposal raised by House Bill 1355, the Committee asked Ruth Sappie of the Fiscal Research Division to conduct a survey of the fifty states to determine whether other states, like North Carolina, allow holding companies to deduct their expenses incurred in generating tax exempt income or deductible dividends. Ms. Sappie presented the results of her study to the Committee at its November meeting. Her study, which is Appendix F of this report, indicated that North Carolina is in line with most states and the federal government to the extent it allows deduction of expenses incurred in generating deductible dividends. North Carolina is out of line with most states, however, to the extent it allows deduction of expenses incurred in generating tax-exempt interest income.

The Committee examined the relevant provision of the current law, G.S. 105-130.5(c)(3), and found it to be so ambiguous that it is impossible to determine whether or not the General Assembly had intended to allow deduction of these expenses. The Committee stated that, regardless whether the deduction is to continue or be eliminated, the General Assembly should revise the language of G.S. 105-130.5(c)(3) to remove all ambiguity regarding the extent to which a taxpayer may deduct expenses incurred in generating income that is not taxed. Because this provision of the law is inherently linked to the banking issue, however, the Committee found that it could not clarify G.S. 105-130.5(c)(3) without either adopting the current law on the banking issue or changing that law. Thus, because the banking issue remained unresolved, the Committee deferred action on the holding company issue as well.

#### -----Repeal of State Privilege License Taxes

The Committee conducted a review of the State's privilege license taxes levied in Article 2 of Chapter 105 of the General Statutes. Staff provided the Committee with an overview of the taxes and a history of earlier study committees' recommendations that the taxes be repealed or reformed. Charles D. Liner of the Institute of Government presented an analysis of the State's privilege license taxes in light of

principles of tax policy. He found that the State's privilege license taxes conform to neither the benefits principle of tax fairness nor the ability to pay principle of tax fairness. The taxes are also fundamentally inequitable because of substantial disparities in taxation of different businesses and individuals. Dr. Liner found State privilege license taxes to be relatively unresponsive to economic growth but fairly stable. The structure of the taxes, according to Dr. Liner's analysis, is complex and illogical, and the taxes are extremely inefficient, i.e., expensive for the state to collect. A summary of Dr. Liner's report is Appendix G of this report. The Committee was impressed by the information before it demonstrating that the State's privilege license taxes violated many important principles of tax policy, but the Committee was mindful that repeal of the State privilege license taxes would cost the General Fund approximately \$30 million a year. The Committee also noted that earlier study committees' proposals to repeal or reform the tax had met with substantial opposition. The Committee decided to defer consideration of this issue until another year.

#### -----Motor Vehicle Dealer License Plates

The Committee created a subcommittee to develop a proposal to curb the abuse of motor vehicle dealer license plates. Abuse of the plates occurs when dealers allow a dealer plate to be used on a motor vehicle that is not, for all practical purposes, part of the inventory of the dealer.

In formulating its proposal the Committee reviewed information prepared by staff on the number and type of motor vehicle dealers, the number of dealer license plates, and the relevant laws in the neighboring states and reviewed letters received from citizens and property tax officials describing the abuses. The letters pointed out that vehicles that are improperly driven by use of a dealer license plate escape property taxation and motor vehicle title and registration fees. These vehicles are not subject to property tax because they are supposedly inventory and are, therefore, exempt from property tax; they are not titled because they are assigned to the dealer. The Committee also received a newspaper article describing one instance of flagrant abuse in Wayne County and heard much anecdotal evidence on the extent of the abuse.

The North Carolina Automobile Dealers Association, which represents franchise dealers, and the North Carolina Independent Automobile Dealers Association presented the subcommittee with recommendations on curbing the abuse. The subcommittee incorporated many of these recommendations into a proposal presented to the Committee.

The Committee debated the subcommittee's proposal at length and made several changes to it. The Committee adopted a revised proposal, Legislative Proposal 23, for recommendation to the General Assembly. Although the Committee adopted the proposal, several members of the committee expressed concerns about various aspects of the proposal. In particular, members expressed concern about the recommended changes in the requirements for obtaining a license to sell motor vehicles and in the lack of restrictions on the use of a motor vehicle driven with a dealer license plate. All Committee members agreed, however, that legislation is needed to address the abundance of dealer license plates that are used on vehicles that are not being offered for sale.

-----Other Issues

The Revenue Laws Study Committee investigated numerous other issues over the course of its study. The Committee revised and renewed its earlier recommendations relating to the highway use tax, income tax treatment of nonresidents, tax secrecy, electronic funds transfer, and the merchant's discount for collecting sales and use taxes; these recommendations are reflected in Legislative Proposals 1, 2, 3, 4, 5, 6, 18, and 19 of this report.

The Committee investigated a proposal recommended by the State Controller designed to enhance State revenues by improving the State's collection of accounts receivable. The Committee's recommendation on this issue is Legislative Proposal 15. The Association of County Commissioners asked the Committee to consider measures to regulate the increasing number of property tax appeals filed by paid representatives. Legislative Proposal 20, providing for occupational licensing of property tax appeal representatives, and Legislative Proposal 21, levying a fee for filing an appeal to the Property Tax Commission, grew out of the Association's recommendations.

The Committee adopted two proposals designed to help prevent tax evasion. Legislative Proposal 17, which provides that a sales tax license becomes void if the holder of the license makes no sales for an 18-month period, is intended to limit opportunities for individuals to purchase property free of sales tax by misrepresenting themselves as retailers who intend to resell the property. Legislative Proposal 22, requested by the Fuel Tax Division of the Department of Revenue and the Special Investigations Division of the Attorney General's Office, provides a criminal penalty for diverting nontaxpaid special fuel for highway use.



The Committee adopted three recommendations to simplify tax administration: Proposal 11 affects income tax refunds; Proposal 13 affects the filing extension for intangibles tax returns; and Proposal 14 affects the penalty for failure to file an inheritance tax return. The Committee adopted Legislative Proposals 8, 9, 10, and 12 to clarify statutory language and remove unintended gaps in the tax statutes. Finally, the Committee addressed numerous technical changes that need to be made to the revenue laws. Legislative Proposal 16 contains the Committee's recommendations for technical changes.

The Committee expresses its appreciation for the assistance of the staff of the Department of Revenue and the staff of the Division of Motor Vehicles. The Committee's task is made easier by the informed comments and suggestions of these tax administrators.



## COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee recommends the following legislation to the 1993 General Assembly. The Committee's legislative proposals consist of twenty-four bills and one resolution. Each proposal is followed by an explanation and a fiscal analysis indicating any anticipated revenue gain or loss resulting from the proposal.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

PROPOSAL 1 (93-LJ-3)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Lower Minimum Highway Use Tax.

(Public)

---

Sponsors: .

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO LOWER THE MINIMUM HIGHWAY USE TAX.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. G.S. 105-187.3 reads as rewritten:  
5 "§ 105-187.3. Rate of tax.  
6 (a) Amount. -- The rate of the use tax imposed by this Article  
7 is three percent (3%) of the retail value of a motor vehicle for  
8 which a certificate of title is issued. The tax is payable as  
9 provided in G.S. 105-187.4. The tax may not be less than ~~forty~~  
10 ~~dollars (\$40.00)~~ twenty dollars (\$20.00) for each motor vehicle  
11 for which a certificate of title is issued, unless the issuance  
12 of a title for the vehicle is exempt from tax under G.S. 105-  
13 187.6(a). The tax may not be more than one thousand five hundred  
14 dollars (\$1,500) for each motor vehicle for which a certificate  
15 of title is issued.  
16 (b) Retail Value. -- The retail value of a motor vehicle for  
17 which a certificate of title is issued because of a sale of the  
18 motor vehicle by a retailer is the sales price of the motor  
19 vehicle, including all accessories attached to the vehicle when  
20 it is delivered to the purchaser, less the amount of any  
21 allowance given by the retailer for a motor vehicle taken in  
22 trade as a partial payment for the purchased motor vehicle. The  
23 retail value of a motor vehicle for which a certificate of title  
24 is issued because of a sale of the motor vehicle by a seller who

1 is not a retailer is the market value of the vehicle, less the  
2 amount of any allowance given by the seller for a motor vehicle  
3 taken in trade as a partial payment for the purchased motor  
4 vehicle. The retail value of a motor vehicle for which a  
5 certificate of title is issued because of a reason other than the  
6 sale of the motor vehicle is the market value of the vehicle.  
7 The market value of a vehicle is presumed to be the value of the  
8 vehicle set in a schedule of values adopted by the Commissioner.

9 (c) Schedules. -- In adopting a schedule of values for motor  
10 vehicles, the Commissioner shall adopt a schedule whose values do  
11 not exceed the wholesale values of motor vehicles as published in  
12 a recognized automotive reference manual."

13 Sec. 2. G.S. 105-187.7 reads as rewritten:

14 "**§ 105-187.7. Credit for tax paid in another state.**

15 A person who, within 90 days before applying for a certificate  
16 of title for a motor vehicle on which the tax imposed by this  
17 Article is due, has paid a sales tax, an excise tax, or a tax  
18 substantially equivalent to the tax imposed by this Article on  
19 the vehicle to a taxing jurisdiction outside this State is  
20 entitled to a credit against the tax due under this Article for  
21 the amount of tax paid to the other jurisdiction. The credit may  
22 not reduce the person's liability under this Article below the  
23 minimum ~~forty-dollar (\$40.00) tax.~~ tax set in G.S. 105-187.3."

24 Sec. 3. G.S. 105-187.8 reads as rewritten:

25 "**§ 105-187.8. Refund for return of purchased motor vehicle.**

26 When a purchaser of a motor vehicle returns the motor vehicle  
27 to the seller of the motor vehicle within 90 days after the  
28 purchase and receives a vehicle replacement for the returned  
29 vehicle or a refund of the price paid the seller, whether from  
30 the seller or the manufacturer of the vehicle, the purchaser may  
31 obtain a refund of the privilege tax paid on the certificate of  
32 title issued for the returned motor vehicle, less the minimum tax  
33 ~~of forty dollars (\$40.00).~~ set in G.S. 105-187.3.

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

39 Sec. 4. This act becomes effective July 1, 1993.

### Explanation of Proposal 1

With this proposal, the Revenue Laws Study Committee renews its recommendation on the topic addressed by the proposal. The proposal lowers the minimum highway use tax from \$40.00 to \$20.00 effective July 1, 1993. The Committee has made this same recommendation to each session of the General Assembly since the enactment of the highway use tax in 1989.

In 1989 the General Assembly created the Highway Trust Fund and imposed the highway use tax to provide revenue for that Fund. The highway use tax replaces the former sales tax on motor vehicles. The highway use tax is 3% of the retail value of a motor vehicle, subject to both a minimum and a maximum tax. The minimum tax is \$40.00. The maximum tax is \$1,000 until July 1, 1993, when it increases to \$1,500.

The highway use tax is payable when a certificate of title is issued for a motor vehicle. The tax is in addition to the \$35.00 fee that is charged for the issuance of a title and the \$10.00 or \$20.00 fee that is charged for the transfer or issuance of a license plate. Thus, the minimum combined tax and fees payable when a certificate of title is transferred as the result of the sale of a motor vehicle is \$85.00 if the new owner transfers a license plate to the vehicle and is \$95.00 if the new owner obtains a new license plate for the vehicle. These figures are the result of adding the \$40.00 tax, the \$35.00 title fee, and either the \$10.00 or \$20.00 fee for a license plate.

When the highway use tax was first enacted, the Committee received numerous complaints about the high minimum amount that must be paid to transfer a certificate of title. The Committee continues to receive complaints about this aspect of the highway use tax. In response to these complaints, the Committee has discussed the highway use tax several times. Each time, the Committee has concluded that the minimum tax of \$40.00 is not fair, particularly when coupled with the \$35.00 title fee, because the tax is very regressive and does not distinguish between motor vehicles valued at less than \$1,300 and those valued at more than \$1,300. The transfer of a boat trailer, for example, that has a value of \$150 triggers the payment of at least \$85.00 in taxes and fees while the transfer of a car valued at \$1,300 triggers payment of the very same amount of taxes and fees.

The Committee makes this recommendation with the knowledge that less revenue will accrue to the Highway Trust Fund if the recommendation is enacted. The

Committee believes, however, that it is more important to make the tax equitable than to maximize tax revenue by continuing to collect an unfair tax.

Because of the inherent inequities of the minimum tax, the Committee debated eliminating the minimum altogether, thereby making the tax based entirely on value until the maximum tax is reached. The Committee chose to recommend lowering the minimum tax rather than eliminating it out of consideration for the strong desires expressed during past legislative debates on this proposal to not reduce Highway Trust Fund revenue for any reason. The Committee's recommendation is therefore a compromise.

Section 1 of the proposal reduces the minimum highway use tax to \$20.00. Sections 2 and 3 are conforming changes and change references to the amount of the minimum tax.



Proposal #1: Lower the Minimum Use Tax

Summary:

The 3% highway use tax levied whenever a vehicle title is transferred contains a minimum tax provision of \$40 on a single transaction. This proposal lowers the \$40 minimum tax to \$20.

Effective Date:

July 1, 1993

Fiscal Effect:

Highway use tax collections are deposited in the Highway Trust Fund. The revenue loss is expected to be approximately \$8 million in FY1993-94 and FY1994-95.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

PROPOSAL 2 (93-LJ-4)  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Highway Use Tax Exemptions. (Public)

---

Sponsors: .

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO EXEMPT CERTAIN TRANSFERS OF VEHICLES FROM THE HIGHWAY  
3 USE TAX.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 105-187.6(a) reads as rewritten:  
6 "(a) Full Exemptions. -- The tax imposed by this Article does  
7 not apply when a certificate of title is issued as the result of  
8 a transfer of a motor vehicle:  
9 (1) To the insurer of the motor vehicle under G.S. 20-  
10 109.1 because the vehicle is a salvage vehicle.  
11 (2) To either a manufacturer, as defined in G.S. 20-  
12 286, or a motor vehicle retailer for the purpose of  
13 resale.  
14 (3) To the same owner to reflect a change or correction  
15 in the owner's name.  
16 (4) By will or intestacy.  
17 (5) By a conveyance between a husband and ~~wife~~ or wife,  
18 a parent and ~~child~~ child, or a stepparent and a  
19 stepchild.  
20 (6) By a distribution of marital property as a result  
21 of a divorce.  
22 (7) To a handicapped person from the Department of  
23 Human Resources after the vehicle has been equipped  
24 by the Department for use by the handicapped.

- 1           (8) To a local board of education for use in the driver  
2           education program of a public school when the motor  
3           vehicle is transferred:  
4           a. By a retailer and is to be transferred back to  
5           the retailer within 180 days after the  
6           transfer to the local board.  
7           b. By a local board of education."  
8           Sec. 2. This act becomes effective July 1, 1993.

## Explanation of Proposal 2

This proposal exempts several transfers of motor vehicles from the highway use tax. The exempted transfers are transfers between stepparents and stepchildren, transfers of handicapped vans from the Department of Human Resources to the handicapped, and transfers of certain driver education vehicles. These three types of transfers are currently subject to highway use tax at the full rate. The exemptions become effective July 1, 1993.

The exemption for transfers between stepparents and stepchildren is a logical extension of the current exemption for transfers between parents and children and a clarification of that exemption. The Revenue Laws Study Committee recommended to the 1990 and 1991 sessions of the General Assembly that transfers between parents and children be exempted from the highway use tax. That recommendation was enacted in 1991. Before then, transfers between parents and children were taxed at the minimum \$40.00 tax.

When the Committee made its recommendation, it assumed that stepparents and stepchildren would be included in an exemption for parents and children. After the exemption for parents and children was enacted in 1991, the Attorney General's Office issued an opinion stating that the exemption for parents and children does not include stepparents and stepchildren. This proposal corrects this problem by specifically including transfers between stepparents and stepchildren in the list of exemptions.

The other two exemptions recommended by this proposal were included in previous recommendations to the 1990 and 1991 sessions of the General Assembly. The two exemptions apply only in limited circumstances. One of these applies to vehicles that are transferred to a handicapped person from the Department of Human Resources after the Department has equipped the vehicle for use by the handicapped. Without this exemption, the vehicle is subject to the highway use tax two times within a short period of time. Currently, highway use tax is paid by the State when the Department of Human Resources acquires a vehicle and equips it for special use and is paid again by the handicapped person to whom the Department transfers the vehicle when the vehicle is ready for use.

The remaining exemption applies to driver education vehicles. This provision is a narrower version of a provision included in previous Committee recommendations to

the 1990 and 1991 sessions of the General Assembly. The Committee's previous proposals exempted from the highway use tax all vehicles transferred to a local board of education to be used in the driver education program of a public school. This proposal exempts only driver education vehicles that are "on loan" from a motor vehicle dealer or were transferred from another local board of education.

The highway use tax is the tax that was enacted in 1989 to replace the sales tax on motor vehicles and provide a source of revenue for the Highway Trust Fund. The tax is 3% of the retail value of a motor vehicle, subject to a minimum tax of \$40.00 and a maximum tax of \$1,000 until July 1, 1993, and a maximum tax of \$1,500 after that date. Unlike the former sales tax on motor vehicles, which was payable only when a motor vehicle was sold, the highway use tax is payable every time a certificate of title is issued for a motor vehicle. A title is issued every time a motor vehicle is transferred to a new owner or the owner changes names, regardless of whether any cash changes hands in the transfer or how many times the vehicle has previously been transferred.

Proposal #2: Highway Use Tax Exemptions

Summary:

This proposal exempts several categories of title transactions from the levy of the 3% highway use tax. The exemptions include:

1. Driver education vehicles,
2. Vans and special vehicles purchased by the Department of Human Resources who re-equips them for use by handicapped persons, and
3. Gifts to stepchildren

**Note:** From 1989 to 1991, title transfers which were gifts between parents and children were taxed at the minimum tax rate of \$40. In the 1991 Session, House Bill 83 expanded that partial exemption from the 3% highway use tax to a full exemption.

Gifts from parents to stepchildren have always been taxed at the full 3% of the value of the vehicle. The Division of Motor Vehicles was challenged by a taxpayer on their interpretation of this exemption, and they requested an opinion from the Attorney General. The Division's interpretation was confirmed.

Effective Date:

July 1, 1993

Fiscal Effect:

Highway use tax collections are deposited in the Highway Trust Fund. The revenue loss associated with each of the proposed exemptions is listed here:

<u>Exemption</u>	<u>Revenue Loss</u>
Driver education vehicles	\$350,500
Human Resources vehicles for the handicapped	15,000
Gifts to stepchildren	<u>240,000</u>
<b>TOTAL</b>	<b>\$605,500</b>







GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

PROPOSAL 3 (93-LJX-1)  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Mobile Classroom & Office Changes. (Public)

---

Sponsors:

---

Referred to:

---

January 27, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE MOBILE CLASSROOMS AND MOBILE OFFICES SUBJECT TO  
3 SALES TAX RATHER THAN HIGHWAY USE TAX AND TO EXEMPT CERTAIN  
4 MOBILE CLASSROOMS FROM SALES TAX.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 105-164.3(8b) reads as rewritten:  
7 "(8b) 'Motor vehicle' means a vehicle that is designed  
8 primarily for use upon the highways and is either  
9 self-propelled or propelled by a self-propelled  
10 vehicle, but does not include:  
11 a. A moped as defined in G.S. 20-4.01(27)(d1).  
12 b. Special mobile equipment as defined in G.S.  
13 20-4.01(44).  
14 c. A tow dolly that is exempt from motor vehicle  
15 title and registration requirements under G.S.  
16 20-51(10) or (11).  
17 d. A farm tractor or other implement of  
18 husbandry.  
19 e. A manufactured ~~home~~ home, a mobile office, or  
20 a mobile classroom.  
21 f. Road construction or road maintenance  
22 machinery or equipment."

1           Sec. 2. G.S. 105-164.4(a) is amended by adding the  
2 following subdivision to read:

3           "(1e) The rate of three percent (3%) applies to the  
4           sales price of each mobile classroom or mobile  
5           office sold at retail, including all accessories  
6           attached to the mobile classroom or mobile office  
7           when it is delivered to the purchaser. The  
8           maximum tax is one thousand five hundred dollars  
9           (\$1,500) per article. Each section of a mobile  
10           classroom or mobile office that is transported  
11           separately to the site where it is to be placed is  
12           a separate article."

13           Sec. 3. G.S. 105-164.13 is amended by adding a new  
14 subdivision to read:

15           "(41) Sales of mobile classrooms to local boards of  
16           education or to local boards of trustees of  
17           community colleges."

18           Sec. 4. This act becomes effective July 1, 1993.

### Explanation of Proposal 3

This proposal makes mobile offices and mobile classrooms subject to sales tax rather than highway use tax and exempts from sales tax mobile classrooms sold to a local board of education or a local board of trustees of a community college. The changes are to become effective July 1, 1993.

Except for the sales tax exemption in this proposal, the changes recommended by the proposal are the same changes the Revenue Laws Study Committee recommended to the 1992 session of the General Assembly as part of Senate Bill 1014. The previously recommended changes were deleted from Senate Bill 1014 when the issue of a sales tax exemption for mobile classrooms arose. This recommendation addresses that issue by including an exemption for certain mobile classrooms.

Mobile offices and mobile classrooms are currently subject to highway use tax rather than sales tax because they are considered to be motor vehicles. Motor vehicles are subject to highway use tax and are not subject to sales tax. The highway use tax is collected only when a vehicle is titled. Although the law requires mobile classrooms and mobile offices to be titled, many are not. Consequently, no highway use tax is being collected on many mobile classrooms and mobile offices.

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 at a later time. Thus, no tax is escaping on manufactured homes but it is escaping on mobile offices and mobile classrooms.

The proposal changes 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 1 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. As noted above, if something is a motor vehicle it is subject to highway use tax, and if it is not a motor vehicle it is subject to sales tax. Section 2 sets the sales tax rate that will apply to mobile offices and mobile classrooms; the rate set is the same as the applicable highway use tax rate. Effective July 1, 1993, the highway use tax rate will be 3% of the retail value of the vehicle, subject to a maximum tax of \$1,500. 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.

Although the proposal makes mobile classrooms subject to sales tax, it exempts from the tax mobile classrooms sold to local boards of education and local boards of trustees of community colleges. The Committee was persuaded that imposing the tax on these mobile classrooms would be an additional tax burden on these local boards because they frequently are not paying the highway use tax when they buy a mobile classroom.

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. This proposal once again makes all three of these items subject to sales tax.

Proposal #3: Mobile Classroom & Office Changes

Summary:

This proposal makes mobile offices and mobile classrooms subject to sales tax and exempts them from the highway use tax. These items are currently considered to be motor vehicles and are subject to the 3% highway use tax.

In practice, these types of mobile units are neither registered nor titled. The Division of Motor Vehicles estimates that as many as 80% are not in compliance with motor vehicle law. Current law classifies mobile offices and classrooms as motor vehicles, and it does not specifically exempt them from standard registration and title requirements under G.S. 20-51.

The proposal includes an exemption from sales tax for mobile classrooms purchased by local school boards and community colleges.

Effective Date:

July 1, 1993

Fiscal Effect:

Based on yearly inspection data provided by the Department of Insurance, the estimate of increased revenues to the General Fund is \$150,000 each year beginning in FY 1993-94. Assuming the 80% estimate of non-compliance is valid, 20% of the \$150,000 in new General Fund revenues, or \$30,000, is the amount of highway use tax the Highway Trust Fund would forego each year if these units became subject to sales tax.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 4 (93-LC-010(1.1))  
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Electronic Funds Transfer.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR REQUIRE  
3 PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 105-228.90(b) is amended by adding a  
6 new subdivision to read:  
7 "(3) Electronic funds transfer. -- A transfer of funds  
8 initiated by using an electronic terminal, a  
9 telephone, a computer, or magnetic tape to instruct  
10 or authorize a financial institution or its agent  
11 to credit or debit an account."  
12 Sec. 2. G.S. 105-241 reads as rewritten:  
13 "~~§ 105-241. Taxes payable in national currency; for what period,~~  
14 ~~and when a lien; priorities. Where and how taxes payable; tax~~  
15 ~~period; liens.~~  
16 (a) Form of Payment. -- Taxes are payable in the national  
17 currency. The Secretary shall prescribe where taxes are to be  
18 paid and whether taxes must be paid in cash, by check, by  
19 electronic funds transfer, or by another method.  
20 (b) Electronic Funds Transfer. -- The Secretary may not require  
21 a taxpayer to pay a tax by electronic funds transfer unless,  
22 during the applicable period for that tax, the average amount of  
23 the taxpayer's required payments of the tax was at least twenty



1 thousand dollars (\$20,000) a month. The twenty thousand dollar  
2 (\$20,000) threshold applies separately to each tax. The  
3 applicable period for a tax is a 12-month period, designated by  
4 the Secretary, preceding the imposition or review of the payment  
5 requirement. The requirement that a taxpayer pay a tax by  
6 electronic funds transfer remains in effect until suspended by  
7 the Secretary. Every 12 months after requiring a taxpayer to pay  
8 a tax by electronic funds transfer, the Secretary shall determine  
9 whether, during the applicable period for that tax, the average  
10 amount of the taxpayer's required payments of the tax was at  
11 least twenty thousand dollars (\$20,000) a month. If it was not,  
12 the Secretary shall suspend the requirement that the taxpayer pay  
13 the tax by electronic funds transfer and shall notify the  
14 taxpayer in writing that the requirement has been suspended.

15 (c) Tax Period. -- Except as otherwise provided in this  
16 Chapter, taxes are levied for the fiscal year of the State in  
17 which they became due.

18 (d) Lien. -- This subsection applies except when another  
19 Article of this Chapter contains contrary provisions with respect  
20 to a lien for a tax levied in that Article. The lien of a tax  
21 attaches to all real and personal property of a taxpayer on the  
22 date a tax owed by the taxpayer becomes due. The lien continues  
23 until the tax and any interest, penalty, and costs associated  
24 with the tax are paid. A tax lien is not extinguished by the  
25 sale of the taxpayer's property. A tax lien, however, is not  
26 enforceable against a bona fide purchaser for value or the holder  
27 of a duly recorded lien unless:

28 (1) In the case of real property, a certificate of tax  
29 liability or a judgment was first docketed in the  
30 office of the clerk of superior court of the county  
31 in which the real property is located.

32 (2) In the case of personal property, there has already  
33 been a levy on the property under an execution or a  
34 tax warrant.

35 The priority of these claims and liens is determined by the date  
36 and time of recording, docketing, levy, or bona fide purchase.

37 If a taxpayer executes an assignment for the benefit of  
38 creditors or if insolvency proceedings are instituted against a  
39 taxpayer who owes a tax, the tax lien attaches to all real and  
40 personal property of the taxpayer as of the date and time the  
41 taxpayer executes the assignment for the benefit of creditors or  
42 the date and time the insolvency proceedings are instituted. In  
43 these cases, the tax lien is subject only to a prior recorded  
44 specific lien and the reasonable costs of administering the

~~1 assignment or the insolvency proceedings. The taxes herein  
2 designated and levied shall be payable in the existing national  
3 currency. State, county, and municipal taxes levied for any and  
4 all purposes pursuant to this Subchapter shall be for the fiscal  
5 year of the State in which they become due, except as otherwise  
6 provided, and the lien of such taxes shall attach annually to all  
7 real estate of the taxpayer within the State on the date that  
8 such taxes are due and payable, and said lien shall continue  
9 until such taxes, with any interest, penalty, and costs which  
10 shall accrue thereon, shall have been paid; in the settlement of  
11 the estate of any decedent where, by any order of court or other  
12 proceeding, the real estate of the decedent has been sold to make  
13 assets to pay debts, such sale shall not have the effect of  
14 extinguishing the lien upon the land so sold for State taxes, nor  
15 shall the same be postponed in any manner to the payment of any  
16 other claim or debt against the estate, save funeral expenses and  
17 cost of administration.~~

~~18 Provided, however, that the lien of State taxes shall not be  
19 enforceable as against bona fide purchasers for value, and as  
20 against duly recorded mortgages, deeds of trust and other  
21 recorded specific liens, as to real estate, except upon docketing  
22 of a certificate of tax liability or a judgment in the office of  
23 the clerk of the superior court of the county wherein the real  
24 estate is situated, and as to personalty, except upon a levy upon  
25 such property under an execution or a tax warrant, and the  
26 priority of the State's tax lien against property in the hands of  
27 bona fide purchasers for value, and as against duly recorded  
28 mortgages, deeds of trust and other recorded specific liens,  
29 shall be determined by reference to the date and time of  
30 docketing of judgment or certificate of tax liability or the levy  
31 under execution or tax warrant. Provided further, that in the  
32 event any taxpayer shall execute an assignment for the benefit of  
33 creditors, or if receivership, a creditor's bill or other  
34 insolvency proceedings are instituted against any taxpayer  
35 indebted in the State on account of any taxes levied by the  
36 State, the lien of State taxes shall attach to any and all  
37 property of such taxpayer or of such insolvent's estate as of the  
38 date and time of the execution of the assignment for the benefit  
39 of creditors or of the institution of proceedings herein  
40 mentioned and shall be subject only to prior recorded specific  
41 liens and reasonable costs of administration. Notwithstanding the  
42 provisions of this paragraph, the provisions contained in G.S.  
43 105-164.38 shall remain in full force and effect with respect to  
44 the lien of sales taxes.~~

~~1 The provisions of this section shall not have the effect of  
2 releasing any lien for State taxes imposed by other law, nor  
3 shall they have the effect of postponing the payment of the said  
4 State taxes or depriving the said State taxes of any priority in  
5 order of payment provided in any other statute under which  
6 payment of the said taxes may be required."~~

7 Sec. 3. G.S. 105-130.19 reads as rewritten:

8 "**§ 105-130.19. Time and place of payment of tax.**

9 (a) Except as provided in Article 4C of this Chapter, the full  
10 amount of the tax payable as shown on the ~~face of the return~~  
11 shall be paid to the Secretary of Revenue at the office where the  
12 ~~return is filed and within the time fixed by law allowed for~~  
13 filing the return. The tax shall be paid at the place and in the  
14 form required by the Secretary pursuant to G.S. 105-241(a).

15 ~~(b), (c) Repealed by Session Laws 1989, c. 37, s. 1.~~

16 ~~(d) The tax may be paid with uncertified check during such  
17 time and under such regulations as the Secretary of Revenue shall  
18 prescribe; but if a check so received is not paid by the bank on  
19 which it is drawn, the taxpayer by whom such check is tendered  
20 shall remain liable for the payment of the tax and for all legal  
21 penalties the same as if such check had not been tendered."~~

22 Sec. 4. G.S. 105-157 reads as rewritten:

23 "**§ 105-157. Time and place of payment of tax.**

24 (a) Except as otherwise provided in this section and in  
25 Article 4A of this Chapter, the full amount of the tax payable as  
26 shown on ~~the face of the return~~ shall be paid to the Secretary at  
27 ~~the office where the return is filed at the time fixed by law~~  
28 within the time allowed for filing the return. If the amount  
29 shown to be due is less than one dollar (\$1.00), no payment need  
30 be made. The tax shall be paid at the place and in the form  
31 required by the Secretary pursuant to G.S. 105-241(a).

32 ~~(b) The tax may be paid with uncertified check during such  
33 time and under such regulations as the Secretary may prescribe;  
34 but if a check so received is not paid by the bank on which it is  
35 drawn, the taxpayer by whom the check was tendered shall remain  
36 liable for the payment of the tax and for all legal penalties the  
37 same as if the check had not been tendered. "~~

38 Sec. 5. G.S. 105-160.7 reads as rewritten:

39 "**§ 105-160.7. Time and place of payment of tax.**

40 (a) The full amount of the tax payable as shown on ~~the face of~~  
41 ~~the return~~ shall be paid to the Secretary at ~~the office where the~~  
42 return is filed at the time fixed by law within the time allowed  
43 for filing the return. However, if the amount shown to be due  
44 after all credits is less than one dollar (\$1.00), no payment

1 need be made. The tax shall be paid at the place and in the form  
2 required by the Secretary pursuant to G.S. 105-241(a).

3 ~~(b) The tax may be paid with uncertified check, but if a check~~  
4 ~~so received is not paid by the financial institution on which it~~  
5 ~~is drawn, the fiduciary by whom the check was tendered shall~~  
6 ~~remain liable for the payment of the tax and for all penalties~~  
7 ~~lawfully imposed."~~

8 Sec. 6. G.S. 105-163.6(a) reads as rewritten:

9 "(a) General. -- A return is due quarterly or monthly as  
10 specified in this section. A return shall be filed with the  
11 Secretary on a form prepared by the Secretary, shall report any  
12 payments of withheld taxes made during the period covered by the  
13 return, and shall contain any other information required by the  
14 Secretary.

15 Withheld taxes are payable quarterly, monthly, or within three  
16 banking days, as specified in this section. Withheld taxes shall  
17 be paid ~~to the Secretary or to a financial institution with which~~  
18 ~~the Secretary has entered a contract to receive payment of~~  
19 ~~withheld taxes.~~ at the place and in the form required by the  
20 Secretary pursuant to G.S. 105-241(a).

21 If the Secretary finds that collection of the amount of taxes  
22 this Article requires an employer to withhold is in jeopardy, the  
23 Secretary may require the employer to file a return or pay  
24 withheld taxes at a time other than that specified in this  
25 section."

26 Sec. 7. G.S. 105-164.18 is repealed.

27 Sec. 8. G.S. 105-236 is amended by adding the following  
28 new subdivisions to read:

29 "(1a) Penalty for Bad Electronic Funds Transfer. -- When  
30 an electronic funds transfer cannot be completed  
31 due to insufficient funds or the nonexistence of  
32 an account of the transferor, the Secretary shall  
33 assess an additional tax, as a penalty, equal to  
34 ten percent (10%) of the amount of the transfer,  
35 subject to a minimum of one dollar (\$1.00) and a  
36 maximum of one thousand dollars (\$1,000). This  
37 subdivision applies to all taxes levied or  
38 assessed by the State.

39 (1b) Making Payment in Wrong Form. -- For making a  
40 payment of tax in a form other than the form  
41 required by the Secretary pursuant to G.S. 105-  
42 241(a), the Secretary shall assess an additional  
43 tax, as a penalty, equal to five percent (5%) of  
44 the amount of the tax, subject to a minimum of one

1                    dollar (\$1.00) and a maximum of one thousand  
2                    dollars (\$1,000)."

3                    Sec. 9. G.S. 105-239.1(a) reads as rewritten:

4                    "(a) Property transferred for an inadequate consideration to a  
5 donee, heir, legatee, devisee, distributee, stockholder of a  
6 liquidated corporation, or any other person at a time when the  
7 transferor is insolvent or is rendered insolvent by reason of the  
8 transfer shall be subject to a lien for any taxes owing by the  
9 transferor to the State of North Carolina at the time of such the  
10 transfer whether or not the amount of such taxes shall have the  
11 taxes has been ascertained or assessed at the time of such the  
12 transfer. Such lien shall be subject to the provisions of the  
13 first proviso contained in G.S. 105-241. G.S. 105-241 applies  
14 to this tax lien. In the event the transferee shall have  
15 disposed of such has disposed of the property so that it cannot  
16 be subjected to the State's tax lien, the transferee shall be  
17 personally liable for the difference between the fair market  
18 value of such the property at the time of the transfer and the  
19 actual consideration, if any, paid to the transferor by the  
20 transferee.

21                    Upon a foreclosure of the State's tax lien upon property in the  
22 hands of a transferee, the value of any consideration which the  
23 transferee shall have established as having been that the  
24 transferee proves has been given to the transferor shall be paid  
25 to the transferee out of the proceeds of the foreclosure sale  
26 before applying such the proceeds toward the satisfaction of the  
27 State's tax lien.

28                    In order to proceed against the transferee or property in his  
29 the transferee's hands, the Secretary shall cause to be docketed  
30 in the office of the clerk of the superior court of the county  
31 wherein the transferee resides or the property is located, as the  
32 case may be, a certificate of tax liability as provided in G.S.  
33 105-242 or a lien certificate which shall set forth the amount of  
34 the lien as determined by the Secretary or as finally determined  
35 upon appeal and a description of the property subject to the  
36 lien. Thereafter, execution may be issued against the transferee  
37 as in the case of other money judgments except that no homestead  
38 or personal exemption shall be allowable or, upon a lien  
39 certificate, an execution may be issued directing the sheriff to  
40 seize the property subject to the lien and sell same in the same  
41 manner as property is sold under execution. Such procedure and  
42 collection shall be subject to the provisions of subsection (c)  
43 of this section."

44                    Sec. 10. G.S. 105-251 reads as rewritten:

1 "§ 105-251. Information must be furnished.

2 ~~Each company, firm, corporation, person, association,~~  
3 ~~copartnership, or public utility shall furnish the Secretary of~~  
4 ~~Revenue in the form of returns prescribed by him, all information~~  
5 ~~required by law and all other facts and information in addition~~  
6 ~~to the facts and information in this act specifically required to~~  
7 ~~be given, which the Secretary of Revenue may require to enable~~  
8 ~~him to carry into effect the provisions of the laws which the~~  
9 ~~said Secretary is required to administer, and shall make specific~~  
10 ~~answers to all questions submitted by the Secretary of Revenue.~~  
11 Every person shall give the Secretary all information the  
12 Secretary requires to fulfill a duty delegated to the Secretary.  
13 The information must be in the form required by the Secretary.  
14 The Secretary may require the information to be furnished  
15 electronically or on paper."

16           Sec. 11. This act becomes effective July 1, 1993.  
17 Notwithstanding the provisions of G.S. 105-241(a) as amended by  
18 this act, the Secretary of Revenue may not begin to require  
19 payment by electronic funds transfer of motor fuels taxes levied  
20 under Subchapter V of Chapter 105 of the General Statutes or of  
21 the inspection fee levied under Article 3 of Chapter 119 of the  
22 General Statutes until July 1, 1995.



## Explanation of Proposal 4

Legislative Proposal 4 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 \$2,100,000 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.

The Revenue Laws Study Committee recommended legislation authorizing an electronic funds transfer program in its interim report to the 1992 Session of the 1991 General Assembly. The proposal was not enacted. Legislative Proposal 4 is the same recommendation, with some modifications.

If Legislative Proposal 4 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, 1994, would involve withholding tax and corporate income tax. Later in 1994, utilities sales tax, utilities franchise tax, alcoholic beverages excise tax, and sales and use tax would be added. Initially, taxpayers with average payments of a single tax of \$100,000 a month would be required to pay electronically. This threshold would be lowered as the program is developed, with full implementation for all targeted business taxes by the end of 1996. The Department would notify taxpayers who must pay taxes electronically and would educate them about 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 4 does not provide an appropriation to pay for the initial costs of the program, but the Department of Revenue would include such an appropriation in its budget request for the 1993-94 fiscal year. Additional appropriations will be necessary in later fiscal years for the costs of the program.

The statutory changes provided in Legislative Proposal 4 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 definition of "electronic funds transfer" to the definitions statute in Article 9 of the Revenue Act, which governs administration of the tax laws.

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 the taxpayer's required payments of that tax was at least \$20,000 a month. This threshold protects smaller taxpayers from having to pay by electronic funds transfer. After the Secretary requires a taxpayer to pay a tax by electronic funds transfer, the Secretary will review the taxpayer's average payments at least annually. If the amount of the payments falls below the \$20,000 threshold, the Secretary will suspend the electronic funds payment requirement and so notify the taxpayer. 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 4 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 4 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.

The planned electronic funds transfer program would offer the debit and credit methods of payment. Under the debit method, a taxpayer may authorize a third party service vendor to debit the taxpayer's account and transfer funds to the State's bank. The Department of Revenue plans to contract service with a bank that has a relationship with a third-party service vendor to collect the data and initiate the transfer. The credit method of transfer involves a taxpayer originating the transfer through the taxpayer's bank. The taxpayer instructs the bank to transfer funds to the State's bank and transmit identifying data with the funds to permit the Department to credit the proper account. Legislative Proposal 19 of this report, which revises the statute that governs confidential tax information, authorizes the Secretary of Revenue to contract with financial institutions for transmittal of tax payments by electronic funds transfers.

Section 11 provides that Legislative Proposal 4 would become effective July 1, 1993. 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, 1994. In addition, Section 11 provides that the Secretary of Revenue may not require payment of motor fuels taxes or inspection fees by electronic funds transfer earlier than July 1, 1995.



Proposal #4: Electronic Funds Transfer

Summary:

This proposal 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 or EFT. EFT 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, 27 states have electronic funds transfer programs in place and many more are expected to adopt EFT programs in the next few years. In other states, these programs are generally restricted to business taxes and to the largest taxpayers.

Effective Date:

January 1, 1993

Fiscal Effect:

There are both revenue and expenditure impacts. Based on information received from other states with electronic funds transfer programs in place, the Department of Revenue estimates that availability of funds paid by electronic funds transfer will be accelerated by three to four days. The increase in General Fund revenues from additional investment earnings is estimated at \$2 million in the first full fiscal year of implementation.

Additional expenditures will be necessary to implement and operate the EFT program. An expansion request will be submitted with the Governor's recommended budget to the General Assembly. Six new positions will be requested, an administrative officer, a secretary, and four accounting technicians. Also requested will be additional funds for employee benefits, data processing hardware and outside services, and printing costs of new tax forms and schedules. The total expansion request of \$465,104 is broken out below:

Salaries	\$107,938
Temporary Employees	\$ 22,132
Employee Benefits	\$ 29,705
Contract Services (EFT)	\$188,804
Tax Schedules/Forms	\$ 25,000
Telephone Service	\$ 25,000
Data Processing Services	\$ 16,525
Contract Services (Bank)	\$ 15,000
Data Processing Hardware	\$ 35,000
<b>TOTAL</b>	<b>\$465,104</b>



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 5 (93-LC-012(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Child Care Credit/Nonresidents.

(Public)

---

Sponsors:

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING NONRESIDENT TAXPAYERS TO CLAIM THE TAX CREDIT  
3 FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 105-151.11 reads as rewritten:  
6 "§ 105-151.11. Credit for child care and certain employment-  
7 related expenses.  
8 (a) A person who is allowed a credit against federal income  
9 tax for a percentage of employment-related expenses under section  
10 21 of the Code shall be allowed as a credit against the tax  
11 imposed by this Division an amount equal to the applicable  
12 percentage of the employment-related expenses as defined in  
13 section 21(b)(2) of the Code. For employment-related expenses  
14 that are incurred only with respect to one or more dependents who  
15 are seven years old or older and are not physically or mentally  
16 incapable of caring for themselves, the applicable percentage is  
17 seven percent (7%). For employment-related expenses with respect  
18 to any other qualifying individual, the applicable percentage is  
19 ten percent (10%).  
20 (b) The amount of employment-related expenses for which a  
21 credit may be claimed may not exceed two thousand four hundred  
22 dollars (\$2,400) if the taxpayer's household includes one  
23 qualifying individual, as defined in section 21(b)(1) of the

1 Code, and may not exceed four thousand eight hundred dollars  
2 (\$4,800) if the taxpayer's household includes more than one  
3 qualifying individual.

4 (c) No credit shall be allowed under this section unless the  
5 taxpayer completes and attaches to the tax return the necessary  
6 form or forms as may be required by the Secretary. No credit  
7 shall be allowed under this section for amounts deducted from  
8 gross income in calculating taxable income under the Code.

9 (d) A nonresident or part-year resident who claims the credit  
10 allowed by this section shall reduce the amount of the credit by  
11 multiplying it by the fraction calculated under G.S. 105-134.5(b)  
12 or (c), as appropriate. The credit allowed by this section may  
13 not exceed the amount of tax imposed by this Division for the  
14 taxable year reduced by the sum of all credits allowable under  
15 this Division, except for payments of tax made by or on behalf of  
16 the taxpayer.

17 ~~(e) No credit shall be allowed under this section with respect~~  
18 ~~to employment-related expenses paid by a nonresident of this~~  
19 ~~State."~~

20 Sec. 2. This act is effective for taxable years  
21 beginning on or after January 1, 1993.

### Explanation of Proposal 5

Legislative Proposal 5 would allow nonresidents to claim the income tax credit for child care and certain employment-related expenses. On July 9, 1981, the General Assembly repealed the income tax deduction for child care expenses and enacted in its place a tax credit for these expenses. At that time nonresidents were not allowed to take income tax deductions that were not directly connected to their North Carolina income. Thus, in changing the child care deduction to a credit, the General Assembly retained the provision that nonresidents could not take advantage of the tax benefit.

A few months later, however, the General Assembly abandoned its policy of disallowing nonresidents' deductions for expenses unrelated to North Carolina income and enacted a new law allowing a nonresident to take a proportional amount of these deductions. Through an oversight, the restriction that had been carried forward from the child care deduction to the child care credit was not similarly modified. This restriction has remained in the law. Legislative Proposal 5 would revise the law to allow nonresidents to claim a proportional amount of the credit for child care and certain employment-related expenses.

The 1989-90 Revenue Laws Study Committee recommended this proposal to the 1991 General Assembly, but it was not enacted. The Committee has renewed the recommendation to the 1993 General Assembly. The bill would be effective for taxable years beginning on or after January 1, 1993.





Proposal #5: Nonresident Child Care Credit

Explanation:

This proposal authorizes nonresidents to claim a prorated child care tax credit, based on the proportion of total income earned in the State.

The 1981 General Assembly converted the state income tax deduction for child care expenses to a tax credit. In the same session, the law denying nonresidents itemized tax deductions not directly connected to the North Carolina income was changed to allow a prorated deduction, depending on the proportion of total income earned in North Carolina. Since the child care deduction had been converted to a credit, the nonresident deduction allowance did not apply to child care expenses.

Effective Date:

January 1, 1993

Fiscal Effect:

The Department of Revenue estimates the General Fund revenue loss to be between \$300,000 to \$500,000 for FY 1993-94 (a minimum loss of \$300,000 but no more than \$500,000).



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 6 (93-LCX-013(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Nonresident Joint Returns.

(Public)

---

Sponsors:

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME TAX  
3 RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH CAROLINA  
4 SOURCES.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 105-152 reads as rewritten:  
7 "**§ 105-152. Income tax returns.**  
8 (a) Who Must File. -- The following individuals shall file  
9 with the Secretary an income tax return under affirmation:  
10           (1) Every resident required to file an income tax  
11           return for the taxable year under the ~~Code and~~  
12           ~~every Code.~~  
13           (1a) Every nonresident required to file an income tax  
14           return for the taxable year under the Code who (i)  
15           derived gross income from North Carolina sources  
16           during the taxable year attributable to the  
17           ownership of any interest in real or tangible  
18           personal property in this State or derived from a  
19           business, trade, profession, or occupation carried  
20           on in this State and (ii) is required to file an  
21           income tax return for the taxable year under the  
22           Code. State.

- 1           (1b) Every nonresident whose spouse is required to file  
2           a return under subdivision (1a) and whose federal  
3           taxable income is determined on a joint federal  
4           return.
- 5           (2) Repealed by Session Laws 1991 (Reg. Sess. 1992), c.  
6           930, s. 1.
- 7           (3) Any individual whom the Secretary believes to be  
8           liable for a tax under this Division, when so  
9           notified by the Secretary and requested to file a  
10          return.
- 11       (b) Taxpayer Deceased or Unable to Make Return. -- If the  
12 taxpayer is unable to file the income tax return, the return  
13 shall be filed by a duly authorized agent or by a guardian or  
14 other person charged with the care of the person or property of  
15 the taxpayer. If an individual who was required to file an  
16 income tax return for the taxable year while living has died  
17 before making the return, the administrator or executor of the  
18 estate shall file the return in the decedent's name and behalf,  
19 and the tax shall be levied upon and collected from the estate.
- 20       (c) Information Required With Return. -- The income tax return  
21 shall show the taxable income and adjustments required by this  
22 Division and any other information the Secretary requires. The  
23 Secretary may require some or all individuals required to file an  
24 income tax return to attach to the return a copy of their federal  
25 income tax return for the taxable year. The Secretary may  
26 require a taxpayer to provide the Department with copies of any  
27 other return the taxpayer has filed with the Internal Revenue  
28 Service and to verify any information in the return.
- 29       (d) Secretary May Require Additional Information. -- When the  
30 Secretary has reason to believe that any taxpayer conducts a  
31 trade or business in a way that directly or indirectly distorts  
32 the taxpayer's taxable income or North Carolina taxable income,  
33 the Secretary may require any additional information for the  
34 proper computation of the taxpayer's taxable income and North  
35 Carolina taxable income. In computing the taxpayer's taxable  
36 income and North Carolina taxable income, the Secretary shall  
37 consider the fair profit that would normally arise from the  
38 conduct of the trade or business.
- 39       (e) Joint Returns. -- A husband and wife shall file a single  
40 income tax return jointly if ~~(i) their federal taxable income is~~  
41 ~~determined on a joint federal return. return and (ii) both~~  
42 ~~spouses are residents of this State or both spouses have North~~  
43 ~~Carolina taxable income.~~ Except as otherwise provided in this  
44 Division, a wife and husband filing jointly are treated as one

1 taxpayer for the purpose of determining the tax imposed by this  
2 Division. A husband and wife filing jointly are jointly and  
3 severally liable for the tax imposed by this Division reduced by  
4 the sum of all credits allowable under this Division including  
5 tax payments made by or on behalf of the husband and wife.  
6 However, if a spouse has been relieved of liability for federal  
7 tax attributable to a substantial understatement by the other  
8 spouse pursuant to section 6013 of the Code, that spouse is not  
9 liable for the corresponding tax imposed by this Division  
10 attributable to the same substantial understatement by the other  
11 spouse. A wife and husband filing jointly have expressly agreed  
12 that if the amount of the payments made by them with respect to  
13 the taxes for which they are liable, including withheld and  
14 estimated taxes, exceeds the total of the taxes due, refund of  
15 the excess may be made payable to both spouses jointly or, if  
16 either is deceased, to the survivor alone.

17 (f) Repealed by Session Laws 1991, (Reg. Sess. 1992), c. 930,  
18 s. 1."

19 Sec. 2. This act is effective for taxable years  
20 beginning on or after January 1, 1993.



## Explanation of Proposal 6

Legislative Proposal 6 would provide that a nonresident married couple may file a joint income tax return even if only one spouse has income in North Carolina. North Carolina has allowed married couples to file joint returns since the Tax Fairness Act was enacted in 1989. In order to file a joint State return, the couple must file a joint federal return and both spouses must either be residents or have income taxable to North Carolina. Virginia imposes the same requirement for joint filing but South Carolina and Georgia allow a nonresident joint return where only one spouse has income in the state.

The 1989-90 Revenue Laws Study Committee received complaints from South Carolina residents that the joint filing requirements are unfair because they do not allow nonresidents the tax benefit that residents receive from filing jointly. Taxpayers pointed out that allowing joint filing would not lead to double exemptions or deductions because of the rules requiring apportionment of income and credit for taxes paid to another State. In addition, in May 1990, the South Carolina General Assembly enacted a new law stating that beginning in 1991 it would no longer allow nonresident joint filing for residents of states that do not allow joint filing for South Carolina residents. This retaliatory legislation was apparently designed to pressure North Carolina to change its law.

The 1989-90 Study Committee's recommendation that the law be changed was not enacted by the 1991 General Assembly. The 1991-92 Study Committee renewed the recommendation, adopting Legislative Proposal 6, which would require all nonresident couples with North Carolina income to file a joint North Carolina return if they file a joint federal return. A couple that files separate federal returns must also file separate North Carolina returns. This change will follow the Georgia and South Carolina rule rather than the Virginia rule that does not allow joint filing for nonresident couples when only one spouse has income in the state. The act is to become effective for taxable years beginning on or after January 1, 1993.

In considering this bill, the Committee also investigated Virginia's income tax law, pursuant to which Virginia has entered into reciprocal agreements with all of its neighboring states other than North Carolina. Virginia law provides that a nonresident who commutes into the state on a daily basis does not have to pay income tax to



Virginia if the state of which the commuter is a resident has a similar exemption for Virginia residents. (Va. Code § 58.1-342.) The statute also allows the Virginia Department of Revenue to enter into reciprocal agreements with other states to provide more extensive exemptions for Virginia income of residents of those states to the extent the other states provide a similar exemption for Virginia residents. In these situations, the state of residence taxes the entire income of the resident and does not need to allow a credit for tax paid to another state.

A representative of the Virginia Department of Revenue reported that under these agreements the revenue effect on each state would more or less be a "wash" because the tax lost by exempting nonresidents' income is offset by the tax gained from not having to allow residents a credit for tax paid to another state. If a state is a net "commute out" state, it would gain; if it is a net "commute in" state, it would lose. The Virginia official stated that any revenue loss is immaterial compared to the great benefit of making it easier for commuters to file their taxes for the Department of Revenue to administer the taxes.

If North Carolina entered into such an agreement with Tennessee, however, which does not have an income tax on earned income, North Carolina would not gain any revenue to offset its loss of taxes on Tennessee residents because North Carolina does not currently have to give its own residents a credit for tax paid to Tennessee on wages earned there.

In order for North Carolina to establish reciprocal commuter exemptions and other reciprocal interstate income tax exemptions, its statutes would need to be amended. The Committee did not have time to recommend legislation on this topic, but it asked the Secretary of Revenue to investigate these exemptions and study the benefits and drawbacks for North Carolina if it were to adopt measures similar to those in effect in Virginia. The Committee recommended that this matter be studied in detail either during the 1993 Session or in the period following adjournment of that Session.

Proposal #6: Nonresident Joint Returns

Summary:

This proposal allows a nonresident married couple to file a joint income tax return even if only one spouse has income in North Carolina.

Under current law, the requirements for filing a joint State return are that the couple must file a joint federal return and both spouses must either be residents or have income taxable to North Carolina.

Effective Date:

January 1, 1993

Fiscal Effect:

The Department of Revenue estimates the annual revenue loss to the General Fund to be \$1.5 million beginning in FY 1993-94.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 7 (93-LCX-029(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Update I.R.C. Reference.

(Public)

---

Sponsors: .

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED  
3 TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 105-228.90(b)(1) reads as rewritten:  
6           "(1) Code. -- The Internal Revenue Code as enacted as of  
7           January 1, ~~1992~~, 1993, including any provisions  
8           enacted as of that date which become effective  
9           either before or after that date. "  
10          Sec. 2. G.S. 105-2.1 reads as rewritten:  
11 "§ 105-2.1. Internal Revenue Code definition.  
12 As used in this Article, the term 'Code' ~~means the Internal~~  
13 ~~Revenue Code as enacted as of January 1, 1992, and includes any~~  
14 ~~provisions enacted as of that date which become effective either~~  
15 ~~before or after that date.~~ has the same meaning as in G.S. 105-  
16 228.90."  
17          Sec. 3. G.S. 105-33.1(1) reads as rewritten:  
18          "~~(1) Code. -- The Internal Revenue Code as enacted as of~~  
19 ~~January 1, 1992, including any provisions enacted~~  
20 ~~as of that date which become effective either~~  
21 ~~before or after that date.~~ Defined in G.S. 105-  
22 228.90."  
23          Sec. 4. G.S. 105-114(b)(1) reads as rewritten:

- 1           "~~(1) The term 'Code' means the Internal Revenue Code as~~  
2           ~~enacted as of January 1, 1992, and includes any~~  
3           ~~provisions enacted as of that date which become~~  
4           ~~effective either before or after that date. has the~~  
5           ~~same meaning as in G.S. 105-228.90."~~
- 6           Sec. 5. G.S. 105-130.2(1) reads as rewritten:
- 7           "~~(1) Code. -- The Internal Revenue Code as enacted as of~~  
8           ~~January 1, 1992, including any provisions enacted~~  
9           ~~as of that date which become effective either~~  
10           ~~before or after that date. Defined in G.S. 105-~~  
11           ~~228.90."~~
- 12           Sec. 6. G.S. 105-131(b)(1) reads as rewritten:
- 13           "~~(1) 'Code' means the Internal Revenue Code as enacted~~  
14           ~~as of January 1, 1992, and includes any provisions~~  
15           ~~enacted as of that date which become effective~~  
16           ~~either before or after that date. has the same~~  
17           ~~meaning as in G.S. 105-228.90."~~
- 18           Sec. 7. G.S. 105-134.1(1) reads as rewritten:
- 19           "~~(1) Code. -- The Internal Revenue Code as enacted as of~~  
20           ~~January 1, 1992, including any provisions enacted~~  
21           ~~as of that date which become effective either~~  
22           ~~before or after that date. Defined in G.S. 105-~~  
23           ~~228.90."~~
- 24           Sec. 8. G.S. 105-134.6(c)(4) reads as rewritten:
- 25           "~~(4) The amount by which the taxpayer's standard~~  
26           ~~deduction has been increased for inflation under~~  
27           ~~section 63(c)(4) of the Code and the amount by~~  
28           ~~which the taxpayer's personal exemptions have been~~  
29           ~~increased for inflation under section 151(d)(4)~~  
30           ~~151(d)(4)(A) of the Code. For the purpose of this~~  
31           ~~subdivision, if the taxpayer's personal exemptions~~  
32           ~~have been reduced by the applicable percentage~~  
33           ~~under section 151(d)(3) of the Code, the amount by~~  
34           ~~which the personal exemptions have been increased~~  
35           ~~for inflation is also reduced by the applicable~~  
36           ~~percentage. "~~
- 37           Sec. 9. G.S. 105-163.1(1) reads as rewritten:
- 38           "~~(1) Code. -- The Internal Revenue Code as enacted as of~~  
39           ~~January 1, 1992, including any provisions enacted~~  
40           ~~as of that date which become effective either~~  
41           ~~before or after that date. Defined in G.S. 105-~~  
42           ~~228.90."~~
- 43           Sec. 10. G.S. 105-163.38(1) reads as rewritten:

1           "~~(1) Code. -- The Internal Revenue Code as enacted as of~~  
2           ~~January 1, 1992, including any provisions enacted~~  
3           ~~as of that date which become effective either~~  
4           ~~before or after that date. Defined in G.S. 105-~~  
5           ~~228.90."~~

6           Sec. 11. G.S. 105-212(f) reads as rewritten:

7           "~~(f) As used in this section, the term 'Code' means the~~  
8           ~~Internal Revenue Code as enacted as of January 1, 1992, and~~  
9           ~~includes any provisions enacted as of that date which become~~  
10           ~~effective either before or after that date. has the same meaning~~  
11           ~~as in G.S. 105-228.90."~~

12           Sec. 12. This act is effective for taxable years  
13 beginning on or after January 1, 1993.



## Explanation of Proposal 7

Legislative Proposal 7 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1992, to January 1, 1993. 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 franchise tax, gift tax, highway use tax, inheritance tax, insurance company premiums 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 only minor changes were made affecting individual income tax and no changes were made affecting the other taxes that make reference to the Code. Information supplied by the Department of Revenue regarding recent changes in the Internal Revenue Code are Appendix I of this report.

Proposal #7: Internal Revenue Code Update

Summary:

This proposal updates the current reference to the Internal Revenue Code from January 1, 1992 to January 1, 1993. 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 annually.

In 1992, Congress enacted only minor changes to the individual income tax, while no changes were made affecting other state taxes that reference the Code. The individual income tax changes are summarized here:

1. Since 1991, higher income taxpayers have been subject to a phaseout of their personal exemption allowance. This provision was scheduled to expire on December 31, 1995. In 1992, the termination of this phaseout was extended to December 31, 1996.
2. Prior to the 1992 Act, partial distributions from tax-qualified pension plans and tax-sheltered annuities could not be rolled over tax free to another plan or annuity unless the distribution equaled at least 50% of the balance in the plan and was payable due to employee death, separation from service, or disability. Now any part of the taxable portion of a distribution can be rolled over tax-free as long as the distribution is not structured in equal payments over a specified period of time.
3. There are new IRS regulations simplifying deposits for withheld income taxes.

Effective Date:

Taxable years beginning on or after January 1, 1993.

Fiscal Effect:

None



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 8 (93-LCX-014(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Federal Determination/Withholding. (Public)

---

Sponsors: .

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO REINSTATE AN INADVERTENTLY DELETED PROVISION RELATING  
3 TO ASSESSMENTS FOR EMPLOYER WITHHOLDING BASED ON FEDERAL  
4 DETERMINATIONS AND TO CLARIFY THE ASSESSMENT STATUTES.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 105-159 reads as rewritten:  
7 "§ 105-159. Corrections and changes. Federal corrections.  
8 If a taxpayer's federal taxable income is corrected or  
9 otherwise determined by the federal government, the taxpayer  
10 must, within two years after being notified of the correction or  
11 final determination by the federal government, file an income tax  
12 return with the Secretary reflecting the corrected or determined  
13 taxable income. If the amount of the taxable income for any year  
14 of any taxpayer under this Division, as reported or as reportable  
15 to the United States Treasury Department, is changed, corrected,  
16 or otherwise determined by the Commissioner of Internal Revenue  
17 or other officer of the United States of competent authority, the  
18 taxpayer, within two years after receipt of the internal revenue  
19 agent's report or supplemental report reflecting the corrected or  
20 determined taxable income shall make return under oath or  
21 affirmation to the Secretary of the corrected, changed, or  
22 determined taxable income. In making an assessment or refund  
23 under this section, the Secretary shall consider all evidence  
24 brought to his attention, whether or not it was considered in the

~~1 federal assessment or correction. If the taxpayer fails to~~  
~~2 notify the Secretary that the taxpayer's taxable income for any~~  
~~3 year as reported or as reportable to the United States Treasury~~  
~~4 Department, is changed, corrected, or otherwise determined for~~  
~~5 federal income tax purposes, the statute of limitations shall not~~  
~~6 apply to assessments under this section. The Secretary shall~~  
~~7 proceed to determine from such all available evidence as may have~~  
~~8 been brought to his attention the correct North Carolina taxable~~  
~~9 income of the taxpayer for the taxable year, and if there is any~~  
~~10 additional tax due from the taxpayer it shall be assessed and~~  
~~11 collected; and if the taxpayer's correct tax liability for the~~  
~~12 taxable year. As used in this section, the term 'all available~~  
~~13 evidence' means evidence of any kind that becomes available to~~  
~~14 the Secretary from any source, whether or not the evidence was~~  
~~15 considered in the federal correction or determination.~~

~~16 The Secretary shall assess and collect any additional tax due~~  
~~17 from the taxpayer as provided in Article 9 of this Chapter. The~~  
~~18 Secretary shall refund any overpayment of tax as provided in~~  
~~19 Article 9 of this Chapter. there has been an overpayment of the~~  
~~20 tax the Secretary shall, within 30 days after the final~~  
~~21 determination of the North Carolina taxable income of the~~  
~~22 taxpayer, refund the amount of the excess: Provided, that any A~~  
~~23 taxpayer who fails to comply with this section within the time~~  
~~24 specified shall be is subject to all the penalties as provided in~~  
~~25 G.S. 105-236, in case of additional tax due, and shall forfeit in~~  
~~26 G.S. 105-236 and forfeits the right to any refund due by reason~~  
~~27 of the change. determination.~~

~~28 When the taxpayer makes the return reflecting the corrected~~  
~~29 taxable income as required by this section, the Secretary shall~~  
~~30 make assessments or refunds based thereon within three years~~  
~~31 after the date the return required by this section is filed and~~  
~~32 not thereafter. When the taxpayer does not make the return~~  
~~33 reflecting the corrected taxable income as required by this~~  
~~34 section but the Department receives from the United States~~  
~~35 government or one of its agents a report reflecting corrected~~  
~~36 taxable income, the Secretary shall make assessments for taxes~~  
~~37 due based on the corrected taxable income within five years after~~  
~~38 the date the report from the United States government or its~~  
~~39 agent is actually received and not thereafter.~~

~~40 Nothing in this section prevents the Secretary from making an~~  
~~41 assessment immediately following the receipt from any source of~~  
~~42 information concerning the correction, change in, or~~  
~~43 determination of taxable income of a taxpayer by the United~~  
~~44 States government. The assessment of tax or additional tax under~~

1 ~~this section shall not be subject to any statute of limitations~~  
2 ~~except as provided in this section."~~

3 Sec. 2. G.S. 105-130.20 reads as rewritten:

4 "§ 105-130.20. Corrections and changes. Federal corrections.

5 If a taxpayer's federal taxable income is corrected or  
6 otherwise determined by the federal government, the taxpayer  
7 must, within two years after being notified of the correction or  
8 final determination by the federal government, file an income tax  
9 return with the Secretary reflecting the corrected or determined  
10 taxable income. (a) If the amount of the taxable income for any  
11 year of any corporation subject to taxation under this Division,  
12 as reported or as reportable to the United States Treasury  
13 Department, is changed, corrected, or otherwise determined by the  
14 Commissioner of Internal Revenue or other officer of the United  
15 States of competent authority, such taxpayer, within two years  
16 after receipt of a final determination reflecting the changed,  
17 corrected or determined taxable income shall make return under  
18 oath or affirmation to the Secretary of Revenue of such taxable  
19 income. The Secretary shall determine from all available  
20 evidence the taxpayer's correct tax liability for the income  
21 year. As used in this section, the term 'all available evidence'  
22 means evidence of any kind that becomes available to the  
23 Secretary from any source, whether or not the evidence was  
24 considered in the federal correction or determination.

25 The Secretary shall assess and collect any additional tax due  
26 from the taxpayer as provided in Article 9 of this Chapter. The  
27 Secretary shall refund any overpayment of tax as provided in  
28 Article 9 of this Chapter. of Revenue shall thereupon proceed to  
29 determine, from such facts or evidence as he may have brought to  
30 his attention or shall otherwise acquire, whether or not the same  
31 were considered or taken into account in the federal  
32 determination, the correct tax liability of such corporation for  
33 the year. If there shall be any additional tax due from such  
34 corporation, the same shall be assessed and collected; and if  
35 there shall have been an overpayment of the tax, the Secretary  
36 shall, within 30 days after the final determination of the tax  
37 liability, refund the amount of such overpayment. (b) Any  
38 corporation which A taxpayer that fails to comply with this  
39 section as to making return of federally determined taxable  
40 income within the time specified shall be is subject to all the  
41 penalties provided in G.S. 105-236, in the case of additional tax  
42 due, and shall forfeit in G.S. 105-236 and forfeits its rights to  
43 any refund due by reason of federal changes. the determination.

~~1 (c) When the corporation makes the return of federally  
2 determined taxable income the Secretary of Revenue shall make  
3 assessments or refunds based thereon within three years from the  
4 date the return required by this section is filed and not  
5 thereafter. If the corporation fails to make such return, no  
6 statute of limitations shall apply: Provided, that if the  
7 Department of Revenue receives from the United States government  
8 or any of its agents a report reflecting such federally  
9 determined taxable income, the Secretary of Revenue shall make  
10 assessment for taxes due based on such taxable income within five  
11 years from the date the report from the United States government  
12 or its agent is actually received and not thereafter. The  
13 assessment of tax or additional tax under this section shall not  
14 be subject to any statute of limitations except as provided in  
15 this section.~~

~~16 (d) Nothing in this section shall be construed as preventing  
17 the Secretary of Revenue from making an assessment immediately  
18 following the receipt from any source of information concerning  
19 the correction, change in, or determination of net income of a  
20 taxpayer by the United States government."~~

21 Sec. 3. G.S. 105-160.8 reads as rewritten:

22 "§ 105-160.8. Corrections and changes. Federal corrections.

23 For purposes of this Division, the provisions of G.S. 105-159  
24 requiring an individual to report ~~changes, corrections, or the~~  
25 the correction or determination of net taxable income by the  
26 Internal Revenue Service shall federal government apply to  
27 fiduciaries required to file returns for estates and trusts."

28 Sec. 4. Article 4A of Chapter 105 of the General  
29 Statutes is amended by adding a new section to read:

30 "§ 105-163.6A. Federal corrections.

31 If the amount of taxes an employer is required to withhold and  
32 pay under the Code is corrected or otherwise determined by the  
33 federal government, the employer must, within two years after  
34 being notified of the correction or final determination by the  
35 federal government, file a return with the Secretary reflecting  
36 the corrected or determined amount. The Secretary shall  
37 determine from all available evidence the correct amount the  
38 employer should have paid under this Article for the period  
39 covered by the federal determination. As used in this section,  
40 the term 'all available evidence' means evidence of any kind that  
41 becomes available to the Secretary from any source, whether or  
42 not the evidence was considered in the federal correction or  
43 determination.

1 The Secretary shall assess and collect any additional tax due  
2 from the employer as provided in Article 9 of this Chapter. If  
3 there has been an overpayment of the tax the Secretary shall  
4 either refund the overpayment to the employer in accordance with  
5 G.S. 105-163.9 or credit the amount of the overpayment to the  
6 individual in accordance with G.S. 105-163.10. An employer who  
7 fails to comply with this section is subject to the penalties in  
8 G.S. 105-236 and forfeits the right to any refund due by reason  
9 of the determination. Failure of an employer to comply with this  
10 section does not, however, affect an individual's right to a  
11 credit under G.S. 105-163.10."

12 Sec. 5. G.S. 105-241.1 reads as rewritten:

13 **"§ 105-241.1. Additional taxes; assessment procedure.**

14 (a) Proposed Assessment. -- If the Secretary discovers that  
15 any tax is due from a taxpayer, the Secretary shall notify the  
16 taxpayer in writing of the kind and amount of tax due and of the  
17 Secretary's intent to assess the tax. This notice shall state  
18 that the proposed assessment will become final unless the  
19 taxpayer applies for a hearing within the time specified in  
20 subsection (c). The Secretary's proposed assessment shall be  
21 based upon the best information available and shall be presumed  
22 correct. If the Secretary of Revenue discovers from the  
23 examination of any return or otherwise that any tax or additional  
24 tax is due from any taxpayer, he shall give notice to the  
25 taxpayer in writing of the kind and amount of tax which is due  
26 and of his intent to assess the same, which notice shall contain  
27 advice to the effect that unless application for a hearing is  
28 made within the time specified in subsection (c), the proposed  
29 assessment will become conclusive and final.

30 If the Secretary is unable to obtain from the taxpayer  
31 adequate and reliable information upon which to base such  
32 assessment, the assessment may be made upon the basis of the best  
33 information available and, subject to the provisions hereinafter  
34 made, such assessment shall be deemed correct.

35 (b) Delivery of Notice. -- The Secretary shall deliver the  
36 notice of a proposed assessment to a taxpayer either in person or  
37 by United States mail sent to the taxpayer's last known address.  
38 A notice mailed to a taxpayer is presumed to have been received  
39 by the taxpayer unless the taxpayer makes an affidavit to the  
40 contrary within 90 days after the notice was mailed. If the  
41 taxpayer makes this affidavit, the time limitations in subsection  
42 (c) apply as if the notice had been delivered on the date the  
43 taxpayer makes the affidavit. The notice required to be given in  
44 subsection (a) may be delivered to the taxpayer by an agent of



~~1 the Secretary or may be sent by mail to the last known address of  
2 the taxpayer and such notice will be deemed to have been received  
3 in due course of the mail unless the taxpayer shall make an  
4 affidavit to the contrary within 90 days after such notice is  
5 mailed, in which event the taxpayer shall be heard by the  
6 Secretary in all respects as if he had made timely application.~~

~~7 (c) Hearing. -- A taxpayer who objects to a proposed  
8 assessment of tax is entitled to a hearing before the Secretary  
9 as provided in this subsection. To obtain a hearing, the  
10 taxpayer must file a written request either for a hearing or for  
11 a written statement of the information and evidence upon which  
12 the proposed assessment is based. If the notice of a proposed  
13 assessment was mailed, the taxpayer's request must be filed  
14 within 30 days after the date the notice was postmarked; if the  
15 notice of a proposed assessment was delivered in person, the  
16 taxpayer's request must be filed within 30 days after the date  
17 the notice was delivered.~~

~~18 Upon the taxpayer's timely request, the Secretary shall furnish  
19 a written statement of the information and evidence upon which  
20 the proposed assessment is based. A taxpayer who requests a  
21 written statement in accordance with this subsection must, to  
22 obtain a hearing, file a written request for a hearing within 30  
23 days after receiving the written statement.~~

~~24 Upon receipt of a timely application for a hearing, the  
25 Secretary shall conduct the hearing at a time and place chosen by  
26 the Secretary. The taxpayer may present any objections to the  
27 proposed assessment at the hearing. The rules of evidence do not  
28 apply to a hearing conducted under this subsection.~~

~~29 Any taxpayer who objects to a proposed assessment of tax or  
30 additional tax shall be entitled to a hearing before the  
31 Secretary of Revenue provided application therefor is made in  
32 writing within 30 days after the mailing or delivery of the  
33 notice required by subsection (a). If application for a hearing  
34 is made in due time, the Secretary of Revenue shall set a time  
35 and place for the hearing and after considering the taxpayer's  
36 objections shall give written notice of his decision to the  
37 taxpayer. The amount of tax or additional tax due from the  
38 taxpayer as finally determined by the Secretary shall thereupon  
39 be assessed and upon assessment shall become immediately due and  
40 collectible.~~

~~41 Provided, the taxpayer may request the Secretary at any time  
42 within 30 days of notice of such proposed assessment for a  
43 written statement, or transcript, of the information and the  
44 evidence upon which the proposed assessment is based, and the~~

~~1 Secretary of Revenue shall furnish such statement, or transcript,  
2 to the taxpayer. Provided, further, after request by the taxpayer  
3 for such written statement, or transcript, the taxpayer shall  
4 have 30 days after the receipt of the same from the Secretary of  
5 Revenue to apply in writing for such hearing, explaining in  
6 detail his objections to such proposed assessment. If no request  
7 for such hearing is so made, such proposed assessment shall be  
8 final and conclusive.~~

9 (d) Assessment. -- If a taxpayer does not apply for a hearing  
10 in accordance with subsection (c), a proposed assessment becomes  
11 final without further notice and is immediately due and  
12 collectible. After the Secretary conducts a hearing under  
13 subsection (c), the Secretary shall make a decision on the  
14 proposed assessment, notify the taxpayer of the decision, and  
15 assess the taxpayer for the amount of tax determined to be due.  
16 Upon assessment, the tax becomes immediately due and collectible.  
17 G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax assessed  
18 under this section. Except in the case of a jeopardy assessment,  
19 the Secretary may not assess a taxpayer for a tax until the  
20 notice required by subsection (a) has been given and one of the  
21 following has occurred:

22 (1) The time for applying for a hearing has expired.

23 (2) The Secretary and the taxpayer have agreed upon a  
24 settlement.

25 (3) The taxpayer has filed a timely application for a  
26 hearing and the Secretary, after conducting the  
27 hearing, has given the taxpayer written notice of  
28 the decision.

29 ~~If no timely application for a hearing is made within 30 days  
30 after notice of a proposed assessment of tax or additional tax is  
31 given pursuant to subsection (a), such proposed tax or additional  
32 tax assessment shall become final without further notice and  
33 shall be immediately due and collectible.~~

34 (e) Statute of Limitations -- The Secretary may propose an  
35 assessment of tax due from a taxpayer at any time if (i) the  
36 taxpayer did not file a proper application for a license or did  
37 not file a return, (ii) the taxpayer filed a false or fraudulent  
38 application or return, or (iii) the taxpayer attempted in any  
39 manner to fraudulently evade or defeat the tax. If a taxpayer  
40 files a return reflecting a federal determination as provided in  
41 G.S. 105-130.20, 105-159, 105-160.8, or 105-163.6A, the Secretary  
42 must propose an assessment of any tax due within three years  
43 after the return is filed. If there is a federal determination  
44 and the taxpayer does not file the return required by G.S. 105-

1 130.20, 105-159, 105-160.8, or 105-163.6A, the Secretary must  
2 propose an assessment of any tax due within five years after the  
3 date the Secretary received the final report of the federal  
4 determination. In all other cases, the Secretary must propose an  
5 assessment of any tax due from a taxpayer within three years  
6 after the date the taxpayer filed an application for a license or  
7 a return or the date the application or return was required by  
8 law to be filed, whichever is later. If the Secretary proposes  
9 an assessment of tax within the time provided in this section,  
10 the final assessment of the tax is timely.

11 A taxpayer may make a written waiver of any of the limitations  
12 of time set out in this subsection, for either a definite or an  
13 indefinite time. If the Secretary accepts the taxpayer's waiver,  
14 the Secretary may propose an assessment at any time within the  
15 time extended by the waiver.

16 ~~Where a proper application for a license or a return has been~~  
17 ~~filed and in the absence of fraud, the Secretary of Revenue shall~~  
18 ~~assess any tax or additional tax due from a taxpayer within three~~  
19 ~~years after the date upon which such application or return is~~  
20 ~~filed or within three years after the date upon which such~~  
21 ~~application or return was required by law to be filed, whichever~~  
22 ~~is the later. Any tax or additional tax due from the taxpayer may~~  
23 ~~be assessed at any time if (i) no proper application for a~~  
24 ~~license or no return has been filed, (ii) a false or fraudulent~~  
25 ~~application or return has been filed, or (iii) there has been an~~  
26 ~~attempt in any manner to fraudulently defeat or evade tax.~~

27 ~~Provided, the taxpayer may make a written waiver of any of the~~  
28 ~~limitations of time set out in this section, for either a~~  
29 ~~definite or indefinite time, and if such waiver is accepted by~~  
30 ~~the Secretary he may institute assessment procedures at any time~~  
31 ~~within the time extended by such waiver. This proviso shall apply~~  
32 ~~to assessments made or undertaken under any provision of all~~  
33 ~~schedules of the Revenue Act, and to assessments under Subchapter~~  
34 ~~V of Chapter 105 and Chapter 18 of the General Statutes.~~

35 ~~(f) Except as hereinafter provided in subsection (g), the~~  
36 ~~Secretary of Revenue shall have no authority to assess any tax or~~  
37 ~~additional tax under this section until the notice required by~~  
38 ~~subsection (a) shall have been given and the period within which~~  
39 ~~an application for a hearing may be filed has expired, or if a~~  
40 ~~timely application for a hearing is filed, until written notice~~  
41 ~~of the Secretary's decision has been given to the taxpayer,~~  
42 ~~provided, however, that if the notice required by subsection (a)~~  
43 ~~shall be mailed or delivered within the limitation prescribed in~~  
44 ~~subsection (e), such limitation shall be deemed to have been~~

~~1 complied with and the proceeding may be carried forward to its  
2 conclusion.~~

3 (g) Jeopardy Assessments. -- Notwithstanding any other  
4 provision of this section, the Secretary of Revenue shall have  
5 authority may at any time within the applicable period of  
6 limitations ~~to proceed at once to immediately~~ assess any tax or  
7 additional tax which ~~he finds~~ the Secretary finds is due from a  
8 taxpayer if, in his opinion, the opinion of the Secretary, the  
9 collection of ~~such~~ the tax is in jeopardy and immediate  
10 assessment is necessary in order to protect the interest of the  
11 State. An assessment under this subsection is invalid if the  
12 Secretary does not give the notice required by subsection (a)  
13 either before or within 30 days after the assessment is made.  
14 ~~State, provided, however, that if an assessment is made pursuant~~  
15 ~~to the authority set forth in this subsection before the notice~~  
16 ~~required by subsection (a) is given, such assessment shall not be~~  
17 ~~valid unless the notice required by subsection (a) shall be given~~  
18 ~~within 30 days after the date of such assessment.~~

19 (h) ~~The rules of evidence do not apply in a hearing before the~~  
20 ~~Secretary of Revenue under this section. G.S. 105-241.2,~~  
21 ~~105-241.3, and 105-241.4 apply to a tax or additional tax~~  
22 ~~assessed under this section.~~

23 (i) Interest. -- All assessments of ~~taxes or additional~~  
24 ~~taxes, tax,~~ exclusive of penalties assessed thereon, on the tax,  
25 shall bear interest at the rate established pursuant to this  
26 subsection from the time the ~~taxes or additional taxes were tax~~  
27 was due until paid. On or before June 1 and December 1 of each  
28 year, the Secretary of Revenue shall establish the interest rate  
29 to be in effect during the six-month period beginning on the next  
30 succeeding July 1 and January 1, respectively, after giving due  
31 consideration to current market conditions and to the rate that  
32 will be in effect on that date pursuant to the ~~Internal Revenue~~  
33 Code. If no new rate is established, the rate in effect during  
34 the preceding six-month period shall continue in effect. The  
35 rate established by the Secretary may not be less than five  
36 percent (5%) per year and may not exceed sixteen percent (16%)  
37 per year. ~~For refunds and assessments made between July 1, 1982,~~  
38 ~~and December 31, 1982, the rate shall be twelve percent (12%) per~~  
39 ~~year.~~

40 ~~From and after January 1, 1978, interest upon assessments and~~  
41 ~~upon additional taxes shall be computed at the rate established~~  
42 ~~by G.S. 105-241.1(i) and shall be computed without regard to any~~  
43 ~~former rate of interest which might have been established by G.S.~~  
44 ~~105-241.1 for the taxable period for which said assessment was~~

1 ~~made, or for the period within which said taxes were due to be~~  
2 ~~paid.~~

3 ~~(il) "Tax" and "additional tax," for the purposes of this~~  
4 ~~Subchapter and for the purposes of Subchapters V and VIII of this~~  
5 ~~Chapter, include penalties and interest, as well as the principal~~  
6 ~~amount of such tax or additional tax.~~

7 (j) Construction. -- This section is in addition to and not in  
8 substitution of any other provision of the General Statutes  
9 relative to the assessment and collection of taxes. ~~taxes and~~  
10 ~~shall not be construed as repealing any other provision of the~~  
11 ~~General Statutes."~~

12 Sec. 5. This act is effective upon ratification and  
13 applies to assessments of taxes for which the statute of  
14 limitations had not expired on or before the date of  
15 ratification.

### Explanation of Proposal 8

The Department of Revenue is required to make assessments of tax within three years after the date a return was filed or was due to be filed, whichever is later. This three-year limitation period does not apply if no proper return has been filed or in the case of fraud.

When the federal Internal Revenue Service makes a change or determination of a taxpayer's income tax, the Department of Revenue is allowed an additional period of time to make an assessment. The taxpayer is required to report the federal determination to the Department of Revenue within two years. The Department of Revenue then has three years to make an assessment. If the taxpayer does not report the federal determination, the Department has five years after learning of the determination to make an assessment.

This additional period for making an assessment was also, until 1990, available in the case of individual income taxes withheld by an employer. In 1990, a revision of the withholding statutes inadvertently deleted a cross-reference to the individual income statutes that authorized the additional assessment period. In the absence of this cross-reference, the assessment must be made within three years after the original return was filed or due to be filed, even if the Department of Revenue does not learn of the federal determination until near, or after, the end of the three-year period.

Legislative Proposal 8 would reinstate the additional period for making assessments of withholding taxes in the case of a federal determination. The proposal also reorganizes and clarifies the statutes that apply to federal determinations and to assessments in general, so that all the various limitations periods are in Article 9, which applies to all taxes collected by the Department, rather than scattered about in the various statutes that apply to specific taxes. The bill is to become effective upon ratification.



Proposal #8: Withholding/Federal Assessments

Background:

Article 9 of Chapter 105 of the General Statutes gives the Secretary of Revenue the authority to assess any tax or additional tax due within three years after the date the return is filed or was due to be filed, whichever is later. If no return has been filed, an assessment can be made at any time.

Article 9 does not address cases where the Internal Revenue Service changes, corrects, or otherwise determines the amount of tax required to be withheld and paid. The binding language in Article 9 prohibits the Department of Revenue from making an assessment unless the revised report is received and an assessment proposed within the three-year window.

Summary:

This proposal would enable the Department of Revenue to make assessments of additional state withholding tax based on revised information on federal tax returns required by the Internal Revenue Service. The taxpayer has the responsibility to report the federal changes within two years. The Department of Revenue is given the authority to make assessments within three years of receiving the report of revisions, or, if the taxpayer does not report the revisions voluntarily, within five years after receiving the report from the Internal Revenue Service.

Effective Date:

Upon ratification

Fiscal Effect:

To the extent these changes enable the Department of Revenue to more effectively collect taxes due, General Fund revenues will be increased by some unknown amount.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 9 (93-LCX-015(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Individual Income Tax Adjustments. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CONFORMING CHANGES TO THE LAW PROVIDING FOR  
3 INDIVIDUAL INCOME TAX ADJUSTMENTS AND TO PROVIDE THAT EXPENSES  
4 PAID IN CONNECTION WITH INTEREST EARNED ON OBLIGATIONS ARE  
5 DEDUCTIBLE FROM AN INDIVIDUAL'S TAXABLE INCOME TO THE EXTENT  
6 THE INTEREST IS TAXABLE.  
7 The General Assembly of North Carolina enacts:  
8 Section 1. G.S. 105-134.6 reads as rewritten:  
9 "§ 105-134.6. Adjustments to taxable income.  
10 (a) S Corporations. -- The pro rata share of each shareholder  
11 in the income attributable to the State of an S Corporation shall  
12 be adjusted as provided in G.S. 105-130.5. The pro rata share of  
13 each resident shareholder in the income not attributable to the  
14 State of an S Corporation shall be subject to the adjustments  
15 provided in subsections ~~(b) and (c)~~ (b), (c), and (d) of this  
16 section.  
17 (b) Deductions. -- The following deductions from taxable  
18 income shall be made in calculating North Carolina taxable  
19 income, to the extent each item is included in ~~gross~~ taxable  
20 income:  
21 (1) Interest upon the obligations of (i) the United  
22 States or its possessions, (ii) this State or a  
23 political subdivision of this State, or (iii) a

- 1 nonprofit educational institution organized or  
2 chartered under the laws of this State.
- 3 (2) Interest upon obligations and gain from the  
4 disposition of obligations to the extent the  
5 interest or gain is exempt from tax under the laws  
6 of this State.
- 7 (3) Benefits received under Title II of the Social  
8 Security Act and amounts received from retirement  
9 annuities or pensions paid under the provisions of  
10 the Railroad Retirement Act of 1937.
- 11 (4) Repealed by Session Laws 1989 (Reg. Sess., 1990),  
12 c. 1002, s. 2.
- 13 (5) Refunds of state, local, and foreign income taxes  
14 included in the taxpayer's gross income.
- 15 (6) a. An amount, not to exceed four thousand dollars  
16 (\$4,000), equal to the sum of the amount  
17 calculated in subparagraph b. plus the amount  
18 calculated in subparagraph c.
- 19 b. The amount calculated in this subparagraph is  
20 the amount received during the taxable year  
21 from one or more state, local, or federal  
22 government retirement plans.
- 23 c. The amount calculated in this subparagraph is  
24 the amount received during the taxable year  
25 from one or more retirement plans other than  
26 state, local, or federal government retirement  
27 plans, not to exceed a total of two thousand  
28 dollars (\$2,000) in any taxable year.
- 29 d. In the case of a married couple filing a joint  
30 return where both spouses received retirement  
31 benefits during the taxable year, the maximum  
32 dollar amounts provided in this subdivision  
33 for various types of retirement benefits apply  
34 separately to each spouse's benefits.
- 35 ~~(7) The amount of inheritance tax attributable to an~~  
36 ~~item of income in respect of a decedent required to~~  
37 ~~be included in gross income under the Code,~~  
38 ~~adjusted as provided in G.S. 105-134.5, 105-134.6,~~  
39 ~~and 105-134.7. The amount of inheritance tax~~  
40 ~~attributable to an item of income in respect of a~~  
41 ~~decedent is (i) the amount by which the inheritance~~  
42 ~~tax paid under Article 1 of this Chapter on~~  
43 ~~property transferred to a beneficiary by a decedent~~  
44 ~~exceeds the amount of inheritance tax that would~~

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

19 ~~The Secretary of Revenue may provide to a~~  
20 ~~beneficiary of an item of income in respect of a~~  
21 ~~decedent any information contained on an~~  
22 ~~inheritance tax return that the beneficiary needs~~  
23 ~~to compute the deduction allowed by this~~  
24 ~~subdivision. Recodified as G.S. 105-134.6(d)(2).~~

- 25 (8) ~~The amount by which the taxpayer's deductions~~  
26 ~~allowed under the Code were reduced, and the amount~~  
27 ~~of the taxpayer's deductions that were not allowed,~~  
28 ~~because the taxpayer elected a federal tax credit~~  
29 ~~in lieu of a deduction, to the extent that a~~  
30 ~~similar credit is not allowed by this Division for~~  
31 ~~the amount. Recodified as G.S. 105-134.6(d)(3).~~

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

- 35 (1) Interest upon the obligations of states, other than  
36 this State, and their political subdivisions.  
37 (2) Any amount allowed as a deduction from gross income  
38 under the Code that is taxed under the Code by a  
39 separate tax other than the tax imposed in section  
40 1 of the Code.  
41 (3) Any amount deducted from gross income under section  
42 164 of the Code as state, local, or foreign income  
43 tax to the extent that the taxpayer's total  
44 itemized deductions deducted under the Code for the

- 1 taxable year exceed the standard deduction  
2 allowable to the taxpayer under the Code reduced by  
3 the amount by which the taxpayer's allowable  
4 standard deduction has been increased under section  
5 63(c)(4) of the Code.
- 6 (4) The amount by which the taxpayer's standard  
7 deduction has been increased for inflation under  
8 section 63(c)(4) of the Code and the amount by  
9 which the taxpayer's personal exemptions have been  
10 increased for inflation under section 151(d)(4) of  
11 the Code. For the purpose of this subdivision, if  
12 the taxpayer's personal exemptions have been  
13 reduced by the applicable percentage under section  
14 151(d)(3) of the Code, the amount by which the  
15 personal exemptions have been increased for  
16 inflation is also reduced by the applicable  
17 percentage.
- 18 (5) The fair market value, up to a maximum of one  
19 hundred thousand dollars (\$100,000), of the donated  
20 property interest for which the taxpayer claims a  
21 credit for the taxable year under G.S. 105-151.12  
22 and the market price of the gleaned crop for which  
23 the taxpayer claims a credit for the taxable year  
24 under G.S. 105-151.14.
- 25 (6) Expenses paid in connection with income deducted  
26 from taxable income under subdivision (b)(1) or (2)  
27 of this section.
- 28 (d) Other Adjustments. -- The following adjustments to taxable  
29 income shall be made in calculating North Carolina taxable  
30 income:
- 31 (1) Expenses paid in connection with income added to  
32 taxable income under subdivision (c)(1) of this  
33 section may be deducted.
- 34 (2) The amount of inheritance tax attributable to an  
35 item of income in respect of a decedent required to  
36 be included in gross income under the Code,  
37 adjusted as provided in G.S. 105-134.5, 105-134.6,  
38 and 105-134.7, may be deducted in the year the item  
39 of income is included. The amount of inheritance  
40 tax attributable to an item of income in respect of  
41 a decedent is (i) the amount by which the  
42 inheritance tax paid under Article 1 of this  
43 Chapter on property transferred to a beneficiary by  
44 a decedent exceeds the amount of inheritance tax

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

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

25           (3) The taxpayer may deduct the amount by which the  
26           taxpayer's deductions allowed under the Code were  
27           reduced, and the amount of the taxpayer's  
28           deductions that were not allowed, because the  
29           taxpayer elected a federal tax credit in lieu of a  
30           deduction. This deduction is allowed only to the  
31           extent that a similar credit is not allowed by this  
32           Division for the amount."

33           Sec. 2. G.S. 105-131.2(a) reads as rewritten:

34           "(a) Adjustment. The pro rata share of each shareholder in the  
35 income attributable to the State of an S Corporation shall be  
36 ~~subject to the adjustments adjusted as provided in G.S. 105-~~  
37 ~~130.5. The pro rata share of each resident shareholder in the~~  
38 ~~income not attributable to the State of an S Corporation shall be~~  
39 ~~subject to the adjustments provided in G.S. 105-134.6(b) and (c).~~  
40 ~~adjusted as provided in G.S. 105-134.6(b), (c), and (d)."~~

41           Sec. 3. This act is effective for taxable years  
42 beginning on or after January 1, 1993.

43



## Explanation of Proposal 9

Legislative Proposal 9 makes a technical change to the statutes providing adjustments that must be made to an individual's federal taxable income in calculating North Carolina taxable income. The proposal also provides that the amount of North Carolina tax-exempt income that may be deducted from federal taxable income is net of expenses. Likewise, the amount of federally tax-exempt income that must be added to North Carolina taxable income is also net of expenses. The bill would become effective beginning with the 1993 tax year.

To calculate North Carolina taxable income, G.S. 105-134.6 provides for deductions for certain items to the extent included in gross income and additions for certain items to the extent not included in gross income. Several of the items to be deducted or added are, however, not specifically identifiable under the Code as income items included in gross income or deductions subtracted from gross income. This lack of uniform identification of items for both federal and State income tax purposes creates technical confusion in interpreting G.S. 105-134.6. To solve this technical problem, Legislative Proposal 9 makes several changes. First, it provides that additions will be made for items to the extent not included in taxable, rather than gross, income. These items are deducted from gross income in calculating federal taxable income under the Code. Second, the proposal adds a new subsection (d) to G.S. 105-134.6 to provide for deduction of amounts that are not specifically identified as income items under the Code.

For pre-1989 tax years, the North Carolina Individual Income Tax Act allowed individuals to deduct their expenses incurred in producing income. No deduction was allowed, however, for expenses incurred in producing tax-exempt income. The federal treatment of expenses incurred in producing tax-exempt income was generally the same.

The rewrite of the Individual Income Tax Act in 1989 provided that North Carolina taxable income would be calculated by making adjustments to the taxpayer's federal taxable income. Income that is taxable for federal purposes but exempt for State purposes is deducted. This type of income includes interest on obligations of the United States, North Carolina Hospital Authorities, and the North Carolina Housing Finance Authority. Income that is exempt for federal purposes but taxable for State purposes is added. Interest on other states' obligations falls into this category. No



adjustment is required for interest on North Carolina State and local government obligations because this income is exempt from both federal and State income tax.

The amounts of income items added or deducted because of differences in federal and State exemptions are not, however, net of expenses. Thus, for State tax purposes, the individual is now effectively allowed a deduction for expenses incurred in producing income from tax-exempt obligations and denied a deduction for expenses incurred in producing income from taxable obligations of other states. This result is contrary to the general rule that expenses incurring in producing income are deductible only if the income is taxable.

Legislative Proposal 9 amends the Individual Income Tax Act to return to the pre-1989 rule regarding these expenses. The bill adds a new subdivision (c)(6) to G.S. 105-134.6 to provide that the taxpayer must add to taxable income expenses that were incurred in producing State tax-exempt income if the expenses were deducted at the federal level. The bill also adds a new subdivision (d)(1) to allow a taxpayer to deduct expenses incurred in producing federally tax-exempt income that has been added to taxable income for North Carolina purposes. These provisions will provide additional adjustments for taxpayers, but will make the operation of the statute consistent with general tax policy regarding deduction of expenses.

**Proposal #9: Individual Income Tax Adjustments**

**Summary:**

This proposal adds two substantive provisions to North Carolina's individual income tax laws regarding additions and subtractions that must be made to federal taxable income in order to calculate state taxable income:

1. North Carolina tax-exempt income must be subtracted from federal taxable income net of expenses, and
2. Federally tax-exempt income required to be added back to North Carolina taxable income must be added net of expenses.

The proposal also makes technical changes to G.S. 105-134.6 (listing income tax adjustments). This section of the statutes provides for additions and subtractions for certain items to the extent they are included or excluded from gross income.

**Effective Date:**

Taxable years beginning on or after January 1, 1993.

**Fiscal Effect:**

The fiscal effect of this proposal is unknown at this time. Further research is being done, and a fiscal analysis will be provided to the General Assembly as soon as it is ready.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

Proposal 10 (93-LCX-028(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Nonresident Alien Income Tax.

(Public)

---

Sponsors: .

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO RESTORE THE STATUTORY AUTHORITY TO TAX THE NORTH  
3 CAROLINA INCOME OF NONRESIDENT ALIENS.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. -- G.S. 105-134.5(b) reads as rewritten:  
6   "(b) Nonresidents. For nonresident individuals, the term  
7 'North Carolina taxable income' means taxable income as  
8 calculated under the Code, adjusted as provided in G.S. 105-134.6  
9 and G.S. 105-134.7, multiplied by a fraction the denominator of  
10 which is the taxpayer's gross income as calculated under the  
11 Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7,  
12 and the numerator of which is the amount of that gross income, as  
13 adjusted, that is derived from North Carolina sources and is  
14 attributable to the ownership of any interest in real or tangible  
15 personal property in this State or is derived from a business,  
16 trade, profession, or occupation carried on in this State. For a  
17 nonresident alien individual who has income that is not taxed  
18 under the Code pursuant to section 894 of the Code, 'North  
19 Carolina taxable income' is calculated as if section 894 of the  
20 Code did not apply to that individual."  
21           Sec. 2. G.S. 105-163.1(15) reads as rewritten:  
22           "(15) Wages. -- The term has the same meaning as in  
23           section 3401 of the Code except (i) it does  
24           not include remuneration paid by a farmer for

1 services performed on the farmer's farm in  
2 producing or harvesting agricultural products  
3 or in transporting the agricultural products  
4 to ~~market.~~ market and (ii) it does include  
5 remuneration that is paid to a nonresident  
6 alien individual and is not taxed under the  
7 Code pursuant to section 894 of the Code."

8 Sec. 3. This act is effective for taxable years  
9 beginning on or after January 1, 1993.

## Explanation of Proposal 10

Legislative Proposal 10 provides that the North Carolina taxable income of a nonresident alien would be determined without regard to any tax treaties or conventions entered into by the federal government and the country of which the alien is a resident. The bill would become effective beginning with the 1993 tax year.

The United States taxes income of a nonresident alien if the income is from a United States source. Residents of certain foreign countries are entitled to reduced rates of, or exemption from, federal tax under a tax treaty between their country of residence and the United States. Income that is exempt from federal taxes under a treaty or convention is not included in federal gross income and is not subject to federal withholding requirements.

The purpose of the tax treaties into which the United States has entered is to avoid double taxation of one taxpayer by more than one country, which has a harmful effect on the international exchange of goods and services and movement of capital and persons. The Organization for Economic Cooperation and Development (OECD) has encouraged its member countries to adopt uniform tax treaties as a way to clarify and standardize the fiscal situation of taxpayers in each member country who are engaged in commercial, industrial, or financial activities in other member countries.

The model treaty developed by the OECD attempts to settle the respective rights to tax income of the country of residence and the country of the income's source or situs. The treaty does this by dividing income into three groups: that which can be taxed only by the country of source or situs, that which can be taxed by both countries to a degree, and that which can be taxed only by the country of residence. The first group includes income from immovable property located in the country, income in connection with a permanent establishment located in the country, income earned from the activities of artists and athletes, and income earned from employment in the country for more than 183 days. The second group includes dividends and interest. The third group includes royalties, capital gains on securities, private sector pensions, and payments received by a student for education and training.

The OECD model treaty contemplates that it will apply to both national and local taxes. The United States has, however, limited the application of the tax treaties it has entered into to only federal taxes. Nonetheless, the Revenue Laws Study Committee

was unable to find other states that were attempting to tax income that is exempt from federal income tax due to a tax treaty.

The exemptions from, or reduced rates of, tax vary under each treaty into which the United States has entered. The exemption will vary depending upon whether the income is personal services income or other income, such as interest, dividends, capital gains, royalties, and pensions and annuities. Most tax treaties to which the United States is a party provide for at least partial exemption from tax for compensation paid for personal services performed in the United States if certain conditions are met.

If a professor or teacher is present in the United States for a specified activity, many treaties exempt income resulting from that activity. Many treaties also exempt amounts a student or apprentice receives from abroad for maintenance and studies in the United States. If a company comes into the United States for less than six months to construct a plant, many treaties will exempt the income of the employees it brings into the United States to perform the construction work. Income of employees earned in connection with a fixed base, such as an ongoing plant, however, would be taxable. Appendix J contains an Internal Revenue Service publication that provides additional information on tax treaties.

Until 1989, North Carolina taxed the North Carolina income of a nonresident alien without regard to federal tax treaties and conventions. Federal tax treaties and conventions address only federal tax and do not purport to regulate state and local taxation of nonresident aliens. The Tax Fairness Act of 1989 redefined North Carolina taxable income as federal taxable income subject to specified adjustments. Section 894 of the Internal Revenue Code provides that federal taxable income does not include income of a nonresident alien that is exempt under a tax treaty or convention. By adopting federal taxable income as the starting point in calculating North Carolina taxable income, the State effectively adopted the federal treaty exemptions.

Legislative Proposal 10 would return to the pre-1989 rule taxing all North Carolina income of a nonresident alien, regardless of any federal tax treaty or convention. To the extent the United States already taxes such income, the North Carolina and federal treatment would still be the same. To the extent the United States exempts the income of nonresident aliens by general law, the North Carolina and federal treatment would also still be the same. To the extent the United States exempts nonresident alien income pursuant to a tax treaty or convention, however, North Carolina would not provide an exemption.

A nonresident alien is an individual who is not a U.S. citizen or resident. A resident alien is an alien who meets either the green card test or the substantial presence test. An alien meets the green card test if the alien is a lawful permanent resident, i.e., holds an immigrant visa, also known as a green card. An alien meets the substantial presence test if the alien is physically present in the United States on at least 31 days during the current calendar year and 183 days during the current calendar year and the two preceding years. In calculating the 183 days, only one-half the days of presence in the first preceding year are counted and only one-fourth the days of presence in the second preceding year are counted. In addition, you do not count days the alien is present in the United States as a teacher, student, or trainee on an "F," "J," or "M" visa.





Proposal #10: Nonresident Aliens Income Tax

Summary:

This proposal changes North Carolina's individual income tax statutes by providing that the North Carolina taxable income of a nonresident alien would be determined without regard to any tax treaties or conventions entered into by the federal government and the alien's country of residence. To the extent the federal government exempts the income of nonresidents by general law, North Carolina would continue to exempt the income.

Effective Date:

Taxable years beginning on or after January 1, 1993.

Fiscal Effect:

The fiscal effect of this proposal is unknown at this time. Further research is being done, and a fiscal analysis will be provided to the General Assembly as soon as it is ready.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 11 (93-LC-026(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Interest on Income Tax Refunds.

(Public)

---

Sponsors: .

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THE STATE SHALL PAY INTEREST ON INCOME TAX  
3 REFUNDS NOT REFUNDED TO THE TAXPAYER WITHIN 45 DAYS AFTER THE  
4 RETURN WAS FILED OR DUE TO BE FILED, WHICHEVER IS LATER.  
5 The General Assembly of North Carolina enacts:  
6                   Section 1. G.S. 105-163.43 reads as rewritten:  
7 "§ 105-163.43. Overpayment refunded.  
8 ~~Any overpayment of estimated tax shall be credited to the~~  
9 ~~taxpayer and applied to the tax imposed upon the taxpayer by~~  
10 ~~Article 4. The Secretary shall not refund any overpayment before~~  
11 ~~the corporation files its annual return. If, upon examining the~~  
12 ~~annual return, the Secretary finds that the estimated tax paid by~~  
13 ~~the corporation exceeds the amount of tax imposed upon the~~  
14 ~~corporation under Article 4, the Secretary shall refund the~~  
15 ~~amount of the overpayment in accordance with the provisions of~~  
16 ~~Article 9.~~  
17 If the amount of estimated tax paid under this Article exceeds  
18 the taxes against which the estimated tax is credited pursuant to  
19 this Article, the excess is considered an overpayment by the  
20 taxpayer and shall be refunded as provided in Article 9 of this  
21 Chapter."  
22                   Sec. 2. G.S. 105-163.16 reads as rewritten:  
23 "§ 105-163.16. Overpayment refunded.

1 ~~(a) Where~~ If the amount of wages withheld at the source under  
2 G.S. 105-163.2 exceeds the tax imposed by Article 4 of this  
3 Chapter against which the ~~tax so withheld may be withheld tax is~~  
4 credited under G.S. 105-163.10, the excess ~~shall be~~ is considered  
5 an overpayment by the employee. ~~—(b) If the amount of estimated~~  
6 tax paid under G.S. 105-163.15 exceeds the taxes imposed by  
7 Article 4 of this Chapter against which the estimated tax ~~so paid~~  
8 ~~may be~~ is credited under the provisions of this Article, the  
9 excess ~~shall be~~ is considered an overpayment by the taxpayer. An  
10 overpayment shall be refunded as provided in Article 9 of this  
11 Chapter.

12 ~~(c) Notwithstanding G.S. 105-266 and G.S. 105-266.1, an~~  
13 ~~overpayment of any tax imposed under Article 4 of this Chapter,~~  
14 ~~as disclosed by the taxpayer's annual return required to be filed~~  
15 ~~by Article 4, shall be refunded to the taxpayer subject to the~~  
16 ~~following exceptions:~~

17 (1) ~~The taxpayer may elect to apply the overpayment to~~  
18 ~~another purpose as provided in Article 9 of this~~  
19 ~~Chapter.~~

20 (2) ~~If the amount of the overpayment is less than one~~  
21 ~~dollar (\$1.00), it will be refunded only upon the~~  
22 ~~taxpayer's written demand for a refund.~~

23 (3) ~~There will be no refund of any part of the~~  
24 ~~overpayment set off under the Setoff Debt~~  
25 ~~Collection Act, Chapter 105A.~~

26 ~~Every refund authorized by this section shall be made as~~  
27 ~~expeditiously as possible after the taxpayer files the final~~  
28 ~~return, and within six months after the date on which the final~~  
29 ~~return is filed or due to be filed, whichever is later, insofar~~  
30 ~~as practical. No interest shall be paid with respect to any~~  
31 ~~refund made within this six-month period. Refunds made after the~~  
32 ~~end of the six-month period shall bear interest computed at the~~  
33 ~~rate established in G.S. 105-241.1(i) for assessments from the~~  
34 ~~end of the six-month period until paid. It is not necessary for~~  
35 ~~the Attorney General to approve the refund. The making of the~~  
36 ~~refund does not absolve any taxpayer of any income tax liability~~  
37 ~~which may in fact exist and the Secretary may make any assessment~~  
38 ~~for any deficiency in the manner provided in Article 9 of this~~  
39 ~~Chapter. No overpayment of tax by the taxpayer shall be refunded~~  
40 ~~irrespective of whether upon discovery or receipt of written~~  
41 ~~demand if the discovery is not made or the demand is not received~~  
42 ~~within three years from the date set by the statute for the~~  
43 ~~filing of the annual return by the taxpayer or within six months~~

1 ~~of the payment of the tax alleged to be an overpayment, whichever~~  
2 ~~date is the later.~~

3 ~~– (d) to (f) Repealed by Session Laws 1991, c. 45, s. 22."~~

4 Sec. 3. G.S. 105-266 reads as rewritten:

5 "§ 105-266. Overpayment of taxes to be refunded with interest.

6 (a) Refund. -- If the Secretary of Revenue discovers from the  
7 examination of any return, or otherwise, that any discovers that  
8 a taxpayer has overpaid the correct amount of tax (including  
9 penalties, interest and costs if any), a tax, that overpayment  
10 if the amount of three dollars (\$3.00) or more, shall be refunded  
11 to the taxpayer within 60 days after it is ascertained together  
12 with interest at the rate established in G.S. 105-241.1(i) for  
13 assessments; provided, that interest. The Secretary shall not  
14 refund an overpayment before the taxpayer has filed the final  
15 return for the tax period. The Secretary may not refund any of  
16 the following:

17 (1) An overpayment set off under Chapter 105A, the  
18 Setoff Debt Collection Act, or under another setoff  
19 debt collection program authorized by law.

20 (2) An income tax overpayment the taxpayer has elected  
21 to apply to another purpose as provided in this  
22 Article.

23 (3) An individual income tax overpayment of less than  
24 one dollar (\$1.00) or another tax overpayment of  
25 less than three dollars (\$3.00), unless the  
26 taxpayer makes a written demand for the refund.

27 (b) Interest. -- An overpayment of tax bears interest at the  
28 rate established in G.S. 105-241.1(i). Interest on an  
29 overpayment of a tax levied under Article 4 of this Chapter  
30 accrues from a date 45 days after the latest of (i) the date the  
31 final return was filed, (ii) the date the final return was due to  
32 be filed, or (iii) the date of the overpayment, until the refund  
33 is paid. Interest on an overpayment of another tax accrues  
34 interest on the refund shall be computed from a date 90 days  
35 after the date the tax was originally paid by the taxpayer;  
36 except that there shall be no refund to the taxpayer of any sum  
37 set off under the provisions of Chapter 105A, the Set-off Debt  
38 Collection Act. taxpayer until the refund is paid.

39 For the purpose of this section, the date a tax is paid is  
40 determined in accordance with section 6611(d), (f), (g), and (h)  
41 of the Code. For the purpose of this section, a refund is paid  
42 on a date determined by the Secretary preceding the date the  
43 refund check is mailed by not more than 30 days.

1 (c) Statute of Limitations. -- ~~If the overpayment is less~~  
2 ~~than three dollars (\$3.00) the overpayment shall be refunded only~~  
3 ~~upon receipt by the Secretary of Revenue of a written demand for~~  
4 ~~the refund from the taxpayer. Provided, however, that no~~ No  
5 ~~overpayment shall be refunded irrespective of~~ refunded, whether  
6 ~~upon discovery or receipt of written demand~~ demand, if the  
7 ~~discovery is not made or the demand is not received within three~~  
8 ~~years from~~ after the date set by the statute for the filing of  
9 the return or within six months of ~~after~~ the payment of the tax  
10 alleged to be an overpayment, whichever ~~date is the~~ is later.

11 (d) Effect of Refund. -- A refund made under this section does  
12 not absolve the taxpayer of a tax liability that may in fact  
13 exist; the Secretary may make an assessment for any deficiency as  
14 provided in this Article.

15 (e) Scope. -- This section does not apply to interest  
16 required under G.S. 105-267. This section applies to a refund  
17 payable to a husband and wife who filed a joint return."

18 Sec. 4. This act is effective upon ratification and  
19 applies to overpayments made on or after the date of  
20 ratification.

## Explanation of Proposal 11

Legislative Proposal 11 provides that the State would pay interest on overpayments of income tax beginning 45 days after the latest of (i) the date the final return was filed, (ii) the date the final return was due, or (iii) the date the overpayment was made. The bill would become effective upon ratification.

Article 9 of Chapter 105 of the General Statutes provides a general rule for interest on tax refunds, which applies to all taxes collected by the Department of Revenue. The general rule, set out in G.S. 105-266, is that interest is calculated starting 90 days after the date of the overpayment until the refund is made.

Under federal law, interest is paid on income tax refunds from the date of overpayment, but there are several special rules to account for the inevitable delay in processing millions of refunds, for early payments of tax, withheld taxes, and estimated payments of tax, for returns that are not processible, and for retroactive application of deductions to create an overpayment for an earlier tax year. First, federal law provides that no interest is paid on an income tax refund if the refund is made within 45 days after the return was filed or due to be filed, whichever is later. Second, federal law provides that early payments of tax, withheld taxes, and payments of estimated tax are considered to have been made on the date the final return was due (April 15 for calendar year taxpayers). Third, federal law provides that if an overpayment is created by retroactive application of a deduction, the overpayment is considered to have been made on the filing date of the tax year the deduction was created. Finally, federal law provides that a return is not considered filed until it is in processible form.

In the case of individual income taxes, North Carolina provides an exception to the general rule for interest on overpayments to address some but not all of these problems. Interest on an overpayment of State individual income tax runs from six months after the later of the date the final return was due or the date the final return was filed. North Carolina corporate income tax does not provide any exception to the general rule for interest on overpayments. The lack of an exception results in substantial interest payments each year from the State to corporations who overpaid their estimated income tax, since estimated tax is paid in quarterly installments preceding the due date of the annual return.

The Revenue Laws Study Committee decided that interest on corporate income tax refunds should be measured in the same manner as interest on other income tax refunds, from a period after the date the final return was due or was filed, whichever is later. This delay in the running of interest recognizes the inevitable delays that result from the large number of refunds the Department of Revenue must process each year. The Committee found that the current six-month period allowed for refunds of individual income tax was too long, however. The Committee decided that the federal 45-day period should be sufficient for both corporate and individual income tax. In addition, the Committee recommended that the special federal provisions addressing retroactive application of deductions, early payments, and unprocessable returns should be adopted for State income tax purposes. Accordingly, Legislative Proposal 11 provides that interest on overpayments of State income tax by corporations and individuals runs from 45 days after the latest of the date the final return was due, the date the final return was filed, or the date the overpayment was made. The bill also adopts several provisions of section 6611 of the Code to determine the date of an overpayment and reorganizes and clarifies G.S. 105-266, which governs refunds of all overpayments.

By delaying the running of interest on corporate income tax overpayments, it is estimated that the State would save \$1 million annually. The Department of Revenue estimates that the change in its refund period from six months to 45 days for individual income tax overpayments will require one-time programming costs of approximately \$593,000.



Proposal #11: Interest/Corporate Income Tax Refunds

Background:

Estimated taxes paid by corporations that exceed the yearly tax liability are refundable. The State pays interest on the amount due the corporate taxpayer starting at ninety (90) days from the date of overpayment to the date the refund is mailed.

This practice conforms to neither Federal law nor to existing State law regarding the individual income tax. The Federal government begins paying interest from the due date or the filed date of the return, whichever is later, and no interest is paid if the refund is made within forty-five (45) days of such date. North Carolina individual income tax statutes do not authorize the State to pay interest on tax refunds until six months after the due date or the filed date of the return, whichever is later.

For all other taxes, there is a general rule in Article 9 of Chapter 105 of the General Statutes (revenue laws) that for tax overpayments, interest is calculated from ninety (90) days after the date of the overpayment until the refund is made.

Summary:

This proposal conforms the provisions for interest accrual on refunds of individual and corporate income taxes to the Federal practice of paying interest from the due date or filed date, whichever is later.

Effective Date:

Upon ratification.

Fiscal Effect:

The Department of Revenue has estimated this change will increase General Fund revenues by approximately \$1 million annually.

On the expenditure side, the Department has indicated there will be initial expenditures for re-programming computer software in the Corporate and Individual Income Tax Divisions of approximately \$593,000 in FY 1993-94. Assuming an appropriation is provided should this proposal be enacted, the net increase in FY 1993-94 to the General Fund is expected to be approximately \$400,000.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H or S

D

Proposal 12 (93-LC-036(1.1))  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Qualified Business Investment Credit. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY EXTENDING THE EXISTING  
3 TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS TO APPLY TO  
4 INVESTMENTS BY PARTNERSHIPS.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 105-163.011 is amended by adding a new  
7 subsection (b1) to read:  
8 "(b1) Partnerships. -- Subject to the limitations contained in  
9 G.S. 105-163.012, a partnership that invests in the equity  
10 securities or subordinated debt of (i) a qualified investment  
11 organization, (ii) a qualified business venture, (iii) a  
12 qualified grantee business, or (iv) a North Carolina Enterprise  
13 Corporation is eligible for a tax credit for the taxable year  
14 equal to twenty-five percent (25%) of the amount invested or  
15 seven hundred fifty thousand dollars (\$750,000), whichever is  
16 less. The partnership may not take the credit for the year in  
17 which the investment is made by the partnership but shall take  
18 the credit for the taxable year of the partnership beginning  
19 during the calendar year following the calendar year in which the  
20 investment was made by the partnership.  
21 Each individual who is a partner in a partnership is allowed as  
22 a credit against the tax imposed by Division II of this Article  
23 for the taxable year an amount equal to the partner's  
24 distributive share of the tax credits for which the partnership

1 is eligible under this subsection. The amount of the credit  
2 allowed an individual under this section may not exceed one  
3 hundred thousand dollars (\$100,000) in a taxable year.

4 Each corporation that is a partner in the partnership is  
5 allowed as a credit against the income tax imposed by Division I  
6 of this Article, the franchise tax imposed by G.S. 105-116, 105-  
7 120.2, and 105-122, or the gross premiums tax imposed by G.S.  
8 105-228.5 and G.S. 105-228.8 for the taxable year an amount equal  
9 to the partner's distributive share of the tax credits for which  
10 the partnership is eligible under this subsection as a result of  
11 the partnership's investment in equity securities of a North  
12 Carolina Enterprise Corporation or a qualified investment  
13 organization. The amount of the credit allowed a corporation  
14 under this section may not exceed seven hundred fifty thousand  
15 dollars (\$750,000) in a taxable year.

16 If a partner's share of the partnership credit is limited due  
17 to the maximum allowable credit under this section for a taxable  
18 year or a corporate partner is not eligible for the credit  
19 because the investment was not in a North Carolina Enterprise  
20 Corporation or a qualified investment organization, the  
21 partnership may not reallocate the unused credit among its other  
22 partners."

23 Sec. 2. G.S. 105-163.012(a) reads as rewritten:

24 "(a) The credit allowed a taxpayer under G.S. 105-163.011 may  
25 not exceed the amount of income tax imposed by Division I or II  
26 of this Article, the amount of franchise tax imposed by Article 3  
27 of this Chapter, or the amount of gross premiums tax imposed by  
28 Article 8B of this Chapter, as appropriate, for the taxable year  
29 reduced by the sum of all other credits allowable except tax  
30 payments made by or on behalf of the taxpayer. The amount of  
31 unused credit allowed under G.S. 105-163.011 may be carried  
32 forward for the next five succeeding years. The one hundred  
33 thousand dollar (\$100,000) and seven hundred fifty thousand  
34 dollar (\$750,000) limitations on the amount of credit allowed a  
35 taxpayer under G.S. 105-163.011 do not apply to unused amounts  
36 carried forward under this subsection."

37 Sec. 3. This act is effective upon ratification and  
38 applies to investments made on or after the date of ratification.

## Explanation of Proposal 12

Legislative Proposal 12 amends the statutes allowing tax credits for qualified business investments. The current law allows the credits only to corporations and individuals; the bill would allow a partnership that invests in qualified business investments to pass the credit for those investments through to its partners. The bill would become effective upon ratification and apply to investments made on or after the date of ratification.

In general, a qualified business investment is an investment in the stock of a North Carolina business that is registered with the Secretary of State and is one of the following: (i) a small business venture ("qualified business venture"); (ii) a business that has received a grant from certain State or federal agencies ("qualified grantee business"); (iii) an investment company whose primary investments are in either or both of these first two types of businesses ("qualified investment organization"); or (iv) a North Carolina Enterprise Corporation. Individuals are allowed a credit for an investment in any of these entities; corporations are allowed a credit for an investment in only the last two types of entities.

Current law provides a cap on the amount of an investment credit allowed. For a corporation, the credit is 25% of the amount invested or \$750,000, whichever is less. A corporation may apply the credit against its income tax, franchise tax, or premiums gross receipts tax. For an individual, the credit is 25% of the amount invested or \$100,000, whichever is less. An individual may apply the credit against the individual's income tax liability. A tax credit is taken for the taxable year beginning in the calendar year following the calendar year in which an investment is made. A credit cannot exceed the amount of taxes imposed; the amount of any unused credit may be carried forward for the next five succeeding years.

Legislative Proposal 12 preserves these caps and limitations for investments made by partnerships. First, the \$750,000 corporate cap applies to the credit allowed a partnership. Second, a corporate or individual partner to whom the credit is passed through is subject to the \$750,000 or \$100,000 cap, as appropriate, for the cumulative amount of qualified business credits it claims each year. As under current law, however, these caps do not apply to amounts carried over from an earlier year. Third, a corporate partner is not allowed to take its share of the partnership's investments in

qualified business ventures and qualified grantee businesses, since current law allows only individuals, not corporations, a credit for investments in these two types of businesses.

Proposal #12: Qualified Business Credit/Partners

Summary:

This proposal would expand the business investment tax credit, currently available to corporations and individuals, to partnerships. The credit is equal to 25% of the amount invested, and it is applied against either the individual or corporate income tax. Maximum credit allowances are different for each tax. Individuals may claim up to \$100,000 and corporations up to \$750,000 in credits annually per qualified investment.

Under this proposal, partnerships would be allowed to claim a credit for any investment that could be claimed by individual investors. The maximum credit allowable would be \$750,000 annually per qualified investment, the maximum allowable to corporate investors.

Effective Date:

Taxable years beginning on or after 1993.

Fiscal Effect:

The fiscal effect is unknown at this time. An estimate of General Fund revenue loss will be provided as soon as it is ready.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 13 (93-LCX-018(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Intangibles Tax Filing Extension. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE THE RULES FOR AN INTANGIBLES TAX FILING EXTENSION  
3 THE SAME AS FOR AN INDIVIDUAL INCOME TAX FILING EXTENSION.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 105-206 reads as rewritten:  
6 "§ 105-206. When taxes due and payable; date lien attaches;  
7 ~~nonresidents; forms for returns; extensions.~~ returns; tax situs.  
8 (a) 'Person' Defined. -- As used in this section, the term  
9 'person' has the meaning provided in G.S. 105-228.90.  
10 (b) When Taxes Due. -- ~~The All~~ All taxes levied in this Article ~~or~~  
11 ~~schedule shall~~ become due and payable on ~~the fifteenth day of~~  
12 ~~April of each year,~~ April 15 of each year.  
13 (c) Lien. -- The lien of a tax levied in this Article attaches  
14 to all real property of the taxpayer on December 31 preceding the  
15 date the tax becomes due. The lien continues until the tax and  
16 any interest, penalty, and costs associated with the tax are  
17 paid. and the lien of such taxes shall attach annually to all  
18 real estate of the taxpayer within this State as of December 31  
19 next preceding the date that such taxes become due and payable,  
20 regardless of the time at which liability for the tax may arise  
21 or the exact amount thereof be determined; and said lien shall  
22 continue until such taxes, with any interest, penalty and costs  
23 which shall accrue thereon, shall have been paid.

1 (d) Returns. -- Every person who owns, or handles on behalf of  
2 the owner, intangible personal property that has a tax situs in  
3 this State and is taxable under this Article shall file an  
4 intangibles tax return with the Secretary. The return shall be  
5 in the form required by the Secretary and shall contain any  
6 information the Secretary requires. The return shall be filed on  
7 or before April 15 of each year. A taxpayer may ask the  
8 Secretary for an extension of time to file a return under G.S.  
9 105-263.

10 ~~Every person, firm, association, corporation, clerk of court,~~  
11 ~~guardian, trustee, executor, administrator, receiver, assignee~~  
12 ~~for creditors, trustee in bankruptcy or other fiduciary owning or~~  
13 ~~holding any intangible personal properties defined and classified~~  
14 ~~and/or liable for or required to pay any tax levied in this~~  
15 ~~Article or schedule, either as principal or agent, shall make and~~  
16 ~~deliver to the Secretary of Revenue in such form as he may~~  
17 ~~prescribe a full, accurate and complete return of such tax~~  
18 ~~liability; such return, together with the total amount of tax~~  
19 ~~due, shall be filed on or before the fifteenth day of April in~~  
20 ~~each year. In case of sickness, absence or other disability or~~  
21 ~~whenever in his judgment good cause exists, the Secretary of~~  
22 ~~Revenue may allow further time for filing returns.~~

23 (e) Tax Situs. -- Intangible personal property owned or held  
24 by a resident of this State has a taxable situs in this State.  
25 Intangible personal property acquired in the conduct of business  
26 in this State and held by a person doing business in this State  
27 has a taxable situs in this State, regardless whether it is kept  
28 inside the State or it is transferred to a related person.  
29 Intangible personal property of the estate of a resident of this  
30 State has a taxable situs in this State.

31 A person engaged in this State, as principal or agent or on  
32 behalf of another, in dealing in or handling intangible personal  
33 property is considered to be doing business in this State for the  
34 purpose of this Article. The person on whose behalf the business  
35 is conducted is also considered to be doing business in this  
36 State for the purpose of this Article. If the person doing  
37 business in this State is a corporation, the corporation that  
38 substantially owns or controls it is also considered to be doing  
39 business in this State.

40 ~~For the purpose of protecting the revenue of this State and to~~  
41 ~~avoid discrimination and prevent evasion of the tax imposed by~~  
42 ~~this Article, every resident or nonresident person, firm,~~  
43 ~~association, trustee or corporation, foreign or domestic, engaged~~  
44 ~~in this State, either as principal or as agent or representative~~

~~1 of or on behalf of another, in buying, selling, collecting,  
2 discounting, negotiating or otherwise dealing in or handling any  
3 of the intangible property defined in this Article, shall be  
4 deemed to be doing business in this State for the purposes of  
5 this Article, and the principal, superior or person on whose  
6 behalf such business is carried on in this State shall likewise  
7 be deemed to be doing business in this State, for the purpose of  
8 this Article, and where such business is carried on in this State  
9 by a corporation, foreign or domestic, it and its parent  
10 corporation or the corporation which substantially owns or  
11 controls it, by stock ownership or otherwise, shall be deemed to  
12 be doing business in this State for the purpose of this Article,  
13 and in all such cases the said intangible property acquired in  
14 the conduct of such business in this State, and outstanding on  
15 December 31 of each year or on any other taxable date, shall be  
16 deemed to have a situs in this State and subject to the tax  
17 imposed by this Article, notwithstanding any transfer between any  
18 of such parties and notwithstanding that the same may be kept or  
19 may then be outside of this State, and any of the intangible  
20 property defined in this Article and acquired in the conduct of  
21 any business carried on in this State, and/or having a business,  
22 commercial or taxable situs in this State, shall be subject to  
23 said tax and returned for taxation by the owner thereof or by the  
24 agent, person, or corporation in this State employed by such  
25 owner to handle or collect the same. Furthermore, the intangible  
26 personal property of the estate of any resident of North Carolina  
27 shall be deemed to have a taxable situs in this State, and a  
28 nonresident administrator or executor of such an estate shall be  
29 subject to the requirements of this Article or schedule in the  
30 same manner and to the same extent as a resident administrator or  
31 executor.~~

~~32 The Secretary of Revenue shall cause to be prepared blank  
33 forms for said returns and shall cause them to be distributed  
34 throughout the State, and to be furnished upon application; but  
35 failure to receive or secure forms shall not relieve any taxpayer  
36 from the obligation of making full and complete return of  
37 intangible personal properties as provided in this Article or  
38 schedule."~~

39 Sec. 2. G.S. 105-263 reads as rewritten:

40 "§ 105-263. Extensions of time for filing a report or return.

41 The Secretary may extend the time in which a person must file a  
42 report or return with the Secretary. To obtain an extension of  
43 time for filing a report or return, a person must comply with any  
44 application requirement set by the Secretary. In addition, if

1 the extension is for a franchise tax return, an income tax  
2 return, ~~or~~ a gift tax return, or an intangible personal property  
3 tax return, the person must pay the amount of tax expected to be  
4 due with the return by the original due date of the return; an  
5 extension of time for filing one of these returns does not extend  
6 the time for paying the tax due or the time when a penalty  
7 attaches for failure to pay the tax.

8 If the extension is for a report or any return other than a  
9 franchise tax return, an income tax return, ~~or~~ a gift tax return,  
10 or an intangible personal property tax return, the person is not  
11 required to pay the amount of tax expected to be due with the  
12 report or return by the original due date of the report or  
13 return; an extension of time for filing a report or one of these  
14 other returns extends the time for paying the tax due and the  
15 time when a penalty attaches for failure to pay the tax. When an  
16 extension of time for filing a report or return extends the time  
17 for paying the tax expected to be due with the report or return,  
18 interest, at the rate established pursuant to G.S. 105-241.1(i),  
19 accrues on the tax due from the original due date of the report  
20 or return to the date the tax is paid."

21           Sec. 3. This act is effective upon ratification.

### Explanation of Proposal 13

Legislative Proposal 13 would make the rules for an intangibles tax filing extension the same as for an individual income tax filing extension. The bill was requested by the Department of Revenue and would become effective upon ratification.

The intangibles tax law provides that the tax return is due on April 15 of each year, but that the Secretary of Revenue may extend the filing deadline for good cause shown. Unlike the individual income tax law, the intangibles tax law does not specifically refer to the administrative provisions of Article 9, which govern all taxes collected by the Department of Revenue. Under Article 9, the Secretary of Revenue may provide for a paperless filing extension; a separate application for the filing extension is not required by statute. Section 1 of Legislative Proposal 13 clarifies that the provisions of Article 9 govern intangibles tax filing extensions and modernizes the language of the intangibles tax statute governing when the tax is due, when liens attach, when returns are due, and how tax situs is determined.

Under current law, an extension of time for filing a franchise tax return, an income tax return, or a gift tax return is not also an extension of time for paying the tax. For other taxes, a filing extension is also an extension of time for paying the tax. Section 2 of Legislative Proposal 13 changes the law to provide that an extension of time for filing an intangibles tax return will no longer operate as an extension of time for paying the tax.



Proposal #13: Intangibles Tax Filing Extension

Summary:

The proposal conforms language in G.S. 105-206 to existing language in G.S. 105-155 and G.S. 105-160.6. All three statutes speak to an extension of time to file various tax returns.

The proposal also amends G.S. 105-263 to provide that an extension of time for filing an intangibles tax return is not also an extension for paying the tax due.

Effective Date:

Upon ratification

Fiscal Impact:

None





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 14 (93-LCX-016(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
6-JAN-93

Short Title: Inheritance Tax Penalty Procedure. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THE PENALTY FOR FAILURE TO FILE AN  
3 INHERITANCE TAX RETURN WILL BE ASSESSED AND COLLECTED IN THE  
4 SAME MANNER AS THE PENALTY FOR FAILURE TO PAY INHERITANCE  
5 TAXES.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 105-23 reads as rewritten:  
8 "~~§ 105-23. Information by administrator and executor. Personal~~  
9 representative to file return.  
10 (a) Return Required. -- Every administrator personal  
11 representative of a decedent who dies intestate shall prepare a  
12 statement return showing as far as can be ascertained the names  
13 of all the heirs-at-large and their relationship to decedent, and  
14 every executor the decedent. Every personal representative of a  
15 decedent who dies testate shall prepare a like statement, return,  
16 accompanied by a copy of the will, showing the relationship to  
17 the decedent of all legatees, distributees, and devisees named in  
18 the will, and the age at the time of the death of the decedent of  
19 all legatees, distributees, devisees, to whom property is  
20 bequeathed or devised for life or for a term of years, and the  
21 names of those, if any, who have died before the decedent,  
22 together with decedent. Each return shall include the  
23 post-office address of executor, administrator, or trustee, the

1 personal representative. ~~If any of the heirs-at-law,~~  
2 ~~distributees, and devisees are minor children of the decedent,~~  
3 ~~such statement shall also show the age of each of such minor~~  
4 ~~children.~~ The statement return shall also contain a complete  
5 inventory of all the real property of the decedent located in and  
6 outside the State, and of all personal property, wherever  
7 situate, of the estate, and of all insurance policies upon the  
8 life of the decedent, together with an appraisal under oath or  
9 affirmation of the value of each class of property embraced in  
10 the inventory, and the value of the whole, together with any  
11 deductions permitted by ~~this statute,~~ law, so far as they may be  
12 ascertained at the time of filing ~~such statement;~~ the return; and  
13 also the full statement of all gifts or advancements made by  
14 deed, grant, or sale to any person or corporation, in trust or  
15 otherwise, within three years prior to the death of the decedent.  
16 ~~The statement herein provided for~~ This return shall be filed with  
17 the Secretary of Revenue at Raleigh, North Carolina, within nine  
18 months after the qualification of the ~~executor or administrator,~~  
19 personal representative upon blank forms to be prepared by the  
20 Secretary of Revenue. ~~If any administrator or executor~~ A  
21 personal representative who fails or refuses to comply with any  
22 of the requirements of this section, ~~he shall be~~ shall be  
23 personally liable to ~~for~~ a penalty in the sum of five hundred  
24 dollars (~~\$500.00~~), ~~to be recovered by the Secretary of Revenue in~~  
25 ~~an action to be brought by the Secretary of Revenue to collect~~  
26 ~~such sum in the Superior Court of Wake County against such~~  
27 ~~administrator or executor.~~ (~~\$500.00~~). This penalty does not  
28 apply, however, if no tax is due on the estate under this  
29 Article. The Secretary of Revenue, for good cause shown, may  
30 remit all or any portion of the penalty imposed under the  
31 ~~provisions of this section.~~ Every ~~executor or administrator~~  
32 personal representative may make a tentative settlement of the  
33 inheritance tax with the Secretary of Revenue, based on the  
34 inventory supported by oath or affirmation provided in this  
35 section. ~~If any executor, administrator, collector, committee,~~  
36 ~~trustee or any personal representative or other fiduciary within~~  
37 or without this State holding or having control of any funds,  
38 property, trust or estate, the transfer of which becomes taxable  
39 under the provisions of this Article, ~~shall fail to file the~~  
40 ~~statement herein required, within the times herein required, the~~  
41 ~~Secretary of Revenue is authorized and shall be required to~~  
42 ~~secure the information herein required from the best sources~~  
43 ~~available, and therefrom assess the taxes levied hereunder,~~  
44 ~~together with the penalties herein and otherwise provided.~~ fails

1 to file the return required by this section within the time  
2 required by this section, the Secretary of Revenue shall obtain  
3 the required information from the best sources available and,  
4 based on this information, shall assess the tax due and any  
5 applicable penalties.

6 (b) Exception. -- An inheritance tax return is not required to  
7 be filed for an estate ~~(i) whose~~ that meets the following  
8 conditions:

9 (1) Its beneficiaries are all either Class A  
10 beneficiaries, as described in G.S. 105-4(a), or  
11 the surviving spouse, and ~~(ii) whose spouse.~~

12 (2) Its gross value, including the value of transfers  
13 over which the decedent retained an interest and  
14 the value of gifts made within three years before  
15 the decedent's death, as provided in G.S. ~~105-2(3),~~  
16 ~~105-2(a)(3),~~ is less than the amount specified in  
17 the following table: two hundred fifty thousand  
18 dollars (\$250,000).

<del>Estates of Decedents Dying</del>	<del>Gross Value of Estates</del>
<del>On or After</del>	
<del>July 1, 1985</del>	<del>\$100,000</del>
<del>August 1, 1985</del>	<del>75,000</del>
<del>July 1, 1986</del>	<del>150,000</del>
<del>January 1, 1987</del>	<del>250,000"</del>

25 Sec. 2. This act becomes effective for estates of  
26 decedents dying on or after July 1, 1993.



### Explanation of Proposal 14

Legislative Proposal 14 would provide that the penalty for failure to file an inheritance tax return would be assessed and collected in the same manner as the penalty for failure to pay inheritance taxes. The bill, requested by the Department of Revenue, would become effective for estates of decedents dying on or after July 1, 1993.

G.S. 105-23 imposes a penalty of \$500 if a personal representative fails or refuses to file an inheritance tax return in accordance with the requirements of that statute. Unlike most tax penalties, the penalty is recoverable only through an action brought in the Superior Court of Wake County.

Article 9 of Chapter 105 of the General Statutes sets out the administrative provisions governing all taxes collected by the Department of Revenue. The procedure for assessing and collecting penalties is the same as for taxes: the Department proposes an assessment and the taxpayer has the right to contest the assessment through standard administrative procedures before appealing to the court system. Article 9 also grants the Department of Revenue the powers of garnishment and attachment.

Much of the inheritance tax law, however, predates the 1949 legislation granting the Secretary of Revenue general assessment authority for all taxes collected by the Department. This chronology explains why the inheritance tax statutes may still contain provisions, such as the one in G.S. 105-23, providing an assessment procedure separate and different from that in Article 9.

Legislative Proposal 14 makes several changes to G.S. 105-23. First, it deletes the requirement that the Secretary of Revenue file suit in Wake County Superior Court to collect the penalty for failure to file an inheritance tax return. In the absence of specific provisions to the contrary, Article 9 assessment procedures will apply to this penalty. Second, the bill specifies that the penalty for failure to file does not apply if there is no inheritance tax due on the estate. Third, the bill substitutes the general term "personal representative" for the terms "administrator" and "executor" that appear in G.S. 105-23. Finally, the bill modernizes some of the archaic language of the statute, deletes a sentence that refers to a part of the law that has been repealed, and corrects an incorrect cross-reference.



**Proposal #14: Inheritance Tax Filing Penalty**

Summary:

This proposal provides that the penalty for failure to file an inheritance tax return would be assessed and collected in the same manner as the penalty for failure to pay inheritance taxes.

The penalty that can be levied is \$500. However, unlike most tax penalties, it is recoverable only through an action brought in the Superior Court of Wake County.

The proposal makes several changes:

1. It deletes the requirement that the Secretary of Revenue file suit in Wake County Superior Court to collect the penalty for failure to file an inheritance tax return.
2. It specifies that the penalty for failure to file does not apply if there is no inheritance tax due.
3. It substitutes the general term "personal representative" for the terms "administrator" and "executor" in statutory language.
4. It makes technical changes to statutory language.

Effective Date:

This act would become effective for estates of decedents dying on or after July 1, 1993.

Fiscal Effect:

There will be a minimal increase in General Fund revenues. It is probable that the elimination of court action to recover the penalty in question will result in a slight increase in the number of penalties assessed.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 15 (93-LC-025B(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
6-JAN-93

Short Title: Statewide Accounts Receivable Program. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A STATEWIDE PROGRAM TO IMPROVE THE COLLECTION  
3 OF ACCOUNTS RECEIVABLE BY THE STATE.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 147 of the General Statutes is  
6 amended by adding a new Article to read:  
7 "Article 6B  
8 Statewide Accounts Receivable Program.  
9 "§ 147-86.20. Definitions.  
10 The following definitions apply in this Article:  
11 (1) Account receivable. -- An amount that a person owes  
12 the State and that has not been received by the  
13 State agency servicing the debt. The term includes  
14 claims, damages, fees, fines, forfeitures, loans,  
15 overpayments, and tuition as well as penalties,  
16 interest, and other costs authorized by law.  
17 (2) Debtor. -- A person who owes an account receivable.  
18 (3) Past due. -- An account receivable is past due if  
19 the State has not received payment of it by the  
20 payment due date.  
21 (4) Person. -- An individual, a fiduciary, a firm, a  
22 partnership, an association, a corporation, a unit  
23 of government, or another group acting as a unit.

1           (5) State agency. -- Defined in G.S. 147-64.4(4). The  
2           term does not include, however, a community  
3           college, a local school administrative unit, or an  
4           area mental health, developmental disabilities, or  
5           substance abuse authority.

6           (6) Write off. -- To remove an account receivable from  
7           a State agency's accounts receivable records.

8 **"§ 147-86.21. State agencies to collect accounts receivable.**

9       A State agency shall take all cost-effective and appropriate  
10 actions to collect all accounts receivable. A State agency shall  
11 establish internal policies and procedures for management and  
12 collection of accounts receivable in accordance with policies and  
13 procedures adopted by the State Controller.

14 **"§ 147-86.22. Statewide accounts receivable program.**

15       (a) Program. -- The State Controller shall implement a  
16 Statewide accounts receivable program. As part of this program,  
17 the State Controller shall do all of the following:

18           (1) Monitor the State's accounts receivable collection  
19           efforts.

20           (2) Coordinate information, systems, and procedures  
21           between State agencies to maximize the collection  
22           of past-due accounts receivable.

23           (3) Adopt policies and procedures for management and  
24           collection of accounts receivable by State  
25           agencies.

26           (4) Establish procedures for writing off accounts  
27           receivable and for determining when to end efforts  
28           to collect accounts receivable after they have been  
29           written off.

30       (b) Credit Card Payment. -- The State Controller may establish  
31 policies that allow accounts receivable to be payable under  
32 certain conditions, with the concurrence of the State Treasurer,  
33 by credit card. A debtor's payment by credit card shall include  
34 a fee equal to any discount charged by the credit card issuer.

35       (c) Collection Techniques. -- The State Controller, in  
36 conjunction with the Office of the Attorney General, shall  
37 establish policies and procedures to govern techniques for  
38 collection of accounts receivable. These techniques may include  
39 use of credit reporting bureaus, collection agencies, judicial  
40 remedies authorized by law, and administrative setoff by a  
41 reduction of an individual's tax refund pursuant to the Setoff  
42 Debt Collection Act, Chapter 105A of the General Statutes, or a  
43 reduction of another payment, other than payroll, due from the

1 State to a person to reduce or eliminate an account receivable  
2 that the person owes the State.

3 "§ 147-86.23. Interest, fees, and penalties.

4 A State agency shall charge interest at the rate established  
5 pursuant to G.S. 105-241.1(i) on a past-due account receivable  
6 from the date the account receivable was due until it is paid. A  
7 State agency shall add to a past-due account receivable a fee to  
8 cover the administrative costs of collection and a late payment  
9 penalty of no more than ten percent (10%) of the account  
10 receivable. A State agency may waive a late-payment penalty for  
11 good cause shown.

12 "§ 147-86.24. Debtor information and skip-tracing.

13 A State agency shall collect from clients and debtors minimum  
14 identifying information as prescribed by the State Controller. A  
15 State agency shall use all available debtor information to skip-  
16 trace debtors as prescribed by the State Controller.

17 The State Controller shall establish procedures to give the  
18 State Controller access to information that is in the custody of  
19 a State agency and could assist in the collection of accounts  
20 receivable owed to another State agency. A State agency that has  
21 this information shall cooperate with the State Controller in  
22 giving the State Controller access to the information. If the  
23 information is contained in an electronic database, the State  
24 agency shall provide the State Controller on-line electronic  
25 access upon request.

26 "§ 147-86.25. Setoff debt collection.

27 The State Controller shall implement a statewide setoff debt  
28 collection program to provide for collection of accounts  
29 receivable that have been written off. The statewide setoff debt  
30 collection program shall not include accounts receivable owed to  
31 The University of North Carolina. The University of North  
32 Carolina may, with the approval of the State Controller,  
33 implement a university-wide setoff debt collection program to  
34 provide for collection of accounts receivable that have been  
35 written off by The University of North Carolina. The statewide  
36 program and the university-wide program shall supplement the  
37 Setoff Debt Collection Act, Chapter 105A of the General Statutes,  
38 and shall provide for written off accounts receivable to be set  
39 off against payments the State owes to debtors, other than  
40 payments of individual income tax refunds and payroll. A program  
41 shall provide that, before final setoff can occur, the State  
42 agency servicing the debt must notify the debtor of the proposed  
43 setoff and of the debtor's right to contest the setoff through an  
44 administrative hearing and judicial review conducted under

1 Articles 3 and 4, respectively, of Chapter 150B of the General  
2 Statutes.

3 "§ 147-86.26. Allocation of collections.

4 Except as required by federal law for accounts receivable  
5 related to programs supported by federal funds, the Office of  
6 State Controller may withhold a percentage of the funds collected  
7 from past-due accounts receivable to offset its costs of  
8 collecting past-due accounts receivable. The State Controller  
9 shall allocate the balance of the funds collected on a  
10 proportional basis to the State agencies that generated the  
11 accounts receivable.

12 "§ 147-86.27. (Effective July 1, 1994) Reporting requirements.

13 A State agency shall provide the State Controller a complete  
14 report of the agency's accounts receivable at least quarterly, or  
15 more frequently as required by the State Controller. The State  
16 Controller shall use the information provided by a State agency  
17 and any additional information available to compile a summary  
18 report of the agency. The State Controller shall provide copies  
19 of these summary reports annually to the Governor, the  
20 Legislative Services Commission of the General Assembly, and each  
21 State agency. Each summary report shall include the following:

- 22 (1) The type of accounts receivable owed to the State  
23 agency.  
24 (2) An aging of the accounts receivable.  
25 (3) Any attempted collection activity and any costs  
26 incurred in the collection process.  
27 (4) Any accounts receivable that have been written off.  
28 (5) Any additional information the State Controller  
29 considers useful.

30 "§ 147-86.28. Rules.

31 A State agency may adopt rules to implement this Article."

32 Sec. 2. G.S. 143B-426.39 is amended by adding a new  
33 subdivision to read:

34 "(9a) Implement a statewide accounts receivable program  
35 in accordance with Article 6B of Chapter 147 of  
36 the General Statutes."

37 Sec. 3. G.S. 96-4(t)(1) reads as rewritten:

38 "(1) Confidentiality of Information Contained in  
39 Records and Reports. -- (i) Except as hereinafter  
40 otherwise provided, it shall be unlawful for any  
41 person to obtain, disclose, or use, or to  
42 authorize or permit the use of any information  
43 which is obtained from any employing unit or  
44 individual pursuant to the administration of this

1 Chapter. (ii) Any claimant or employer or their  
2 legal representatives shall be supplied with  
3 information from the records of the Employment  
4 Security Commission to the extent necessary for  
5 the proper presentation of claims or defenses in  
6 any proceeding under this Chapter.  
7 Notwithstanding any other provision of law, any  
8 claimant may be supplied, subject to restrictions  
9 as the Commission may by regulation prescribe,  
10 with any information contained in his payment  
11 record or on his most recent monetary  
12 determination, and any individual, as well as any  
13 interested employer, may be supplied with  
14 information as to the individual's potential  
15 benefit rights from claim records. (iii) Subject  
16 to restrictions as the Commission may by  
17 regulation provide, information from the records  
18 of the Employment Security Commission may be made  
19 available to any agency or public official for  
20 any purpose for which disclosure is required by  
21 statute or regulation. (iv) The Commission may,  
22 in its sole discretion, permit the use of  
23 information in its possession by public officials  
24 in the performance of their public duties. (v)  
25 The Commission shall release the payment and the  
26 amount of unemployment compensation benefits upon  
27 receipt of a subpoena in a proceeding involving  
28 child support. (vi) The Commission shall furnish  
29 to the State Controller any information the State  
30 Controller needs to prepare and publish a  
31 comprehensive annual financial report of the  
32 ~~State.~~ State or to track debtors of the State."

33 Sec. 4. G.S. 147-86.27, as enacted by Section 1 of this  
34 act, becomes effective July 1, 1994. The remainder of this act  
35 becomes effective July 1, 1993. The interest, fees, and  
36 penalties authorized by G.S. 147-86.23, as enacted by Section 1  
37 of this act, apply to debts incurred on or after July 1, 1993.



## Explanation of Proposal 15

Legislative Proposal 15 establishes a statewide accounts receivable program to be administered by the State Controller. Accounts receivable are amounts owed the State; they include claims, fees, fines, forfeitures, loans, overpayments, and tuition. The debtor who owes the account receivable may be a local government, the federal government, a taxpayer, a hospital patient, the recipient of a student loan, or any other person or entity. According to the State Controller, the State's General Fund accounts receivable have increased more than 156% between 1988 and 1992, from \$271 million to \$695 million. For each day earlier the General Fund accounts receivable could be collected, the State would earn \$115,735 in interest.

The State currently has no statewide accounts receivable management program. Each State agency services its own accounts with the legal assistance of the Attorney General's Office. The aggressiveness with which accounts receivable are collected and the adequacy of management systems vary from one agency to another. Agencies report their accounts receivable status to the State Controller only annually, after the end of the fiscal year. For this reason, the State Controller does not have current, detailed information regarding outstanding accounts receivable.

Legislative Proposal 15 would require the State Controller to implement a statewide accounts receivable management system effective beginning July 1, 1993. The new law would require all State agencies to take all cost-effective and appropriate actions to collect their accounts receivable. The State Controller would develop policies and procedures for State agencies to follow in managing and collecting accounts receivable. The State Controller would also coordinate information and systems between State agencies to enhance their collection efforts. State agencies would be required to obtain identifying information from clients and debtors. This information would be used to skip-trace debtors. The State Controller would prescribe procedures for skip-tracing debtors and would serve as a clearinghouse for debtor information held by State agencies.

Under current law, State agencies are not authorized to charge interest and penalties on past-due accounts receivable unless these charges have been established by contract between the agency and the debtor. Legislative Proposal 15 would require all State agencies to begin charging interest and penalties beginning with debts incurred on

or after July 1, 1993. State agencies would be authorized to waive penalties for good cause shown.

The proposal would require the State Controller to implement a statewide setoff debt collection program. The State already has a setoff debt collection program administered by the Department of Revenue, that provides for setoff of debts owed the State against refunds of individual income tax. The new program to be implemented by the Controller would provide for setoff against other payments, such as vendor payments, but not payroll. The University of North Carolina system would not be included in the Controller's setoff program, but would be authorized to implement its own setoff debt collection program. Each setoff debt collection program would be required to give the debtor adequate notice and an opportunity to contest the debt before final setoff could occur.

Finally, Legislative Proposal 15 would require the State Controller to gather information from all State agencies at least quarterly, beginning July 1, 1994. The State Controller would be required to publish detailed annual reports for each agency setting out the type of accounts receivable it is owed, the age of the accounts, any attempted collection activity and its cost, and any accounts receivable that have been written off. These reports would be distributed to the Governor, the General Assembly, and each State agency.



Proposal #15: Statewide Accounts Receivable Program

Explanation:

This proposal establishes a statewide accounts receivable program to be administered by the State Controller. Examples of accounts receivable owed the state are fees, fines, forfeitures, loans, and tuition.

The State's General Fund accounts receivable have increased 156% from 1988 to 1992, from \$271 million to \$695 million. North Carolina currently has no statewide accounts receivable management program. Each State agency services its own accounts with the legal assistance of the Attorney General's Office. Agencies then report their accounts receivable status to the State Controller annually, after the end of the fiscal year. The State Controller, the chief fiscal officer of the state, does not have current and complete information on the volume or status of outstanding accounts receivable.

The proposal would require the State Controller to implement a statewide accounts receivable management system beginning July 1, 1993. In addition, the State Controller would be required to implement a statewide setoff debt collection program. The current state program is administered by the Department of Revenue and provides for setoff of debts owed the State against refunds of individual income tax. The new program would provide for setoff against several other payments, primarily vendor payments.

Effective Date:

State agency reporting requirements become effective on July 1, 1994. The remainder of the bill becomes effective July 1, 1993.

Fiscal Effect:

The State Controller's Office estimates that for each million dollars of outstanding receivables, if collected and in the State Treasury one day earlier, at 6% annual interest, the State would earn an additional \$167 per day. For each day earlier all General Fund accounts receivable could be collected, the Controller's office estimates the State would earn \$115,735 in additional interest.

The implementation date of this program is July 1, 1993. In FY 1993-94, the State Controller's office will establish policy and guidelines for the new statewide accounts receivable program. At this time, it is estimated that two additional staff people will be needed to accomplish this task by July 1, 1994. On that date, the State Controller's Office will begin receiving information from all General Fund agencies regarding the status of outstanding accounts receivable, and it will begin monitoring and assisting agencies to service their accounts receivable according to the new guidelines for improved efficiency of collection. Additional General Fund revenue availability will not occur until the second year of the 1993-95 biennial budget.

According to the State Controller's Office, in FY 1993-94 there will be an expansion budget request for two additional staff and additional computer hardware and software costs associated with the development of the new program. This expenditure data is currently being developed, and it will be provided to the General Assembly with the new Governor's recommended budget.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 16 (93-LCX-001A(1.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
6-JAN-93

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE
3 LAWS AND RELATED STATUTES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 7 of Chapter 1007 of the 1991
6 Session Laws is repealed.
7 Sec. 2. The catchline of G.S. 20-81.12 reads as
8 rewritten:
9 "§ 20-81.12. Collegiate insignia plates, high school insignia
10 plates, plates and historical attraction plates."
11 Sec. 3. G.S. 105-23(b) reads as rewritten:
12 "(b) Exception. -- An inheritance tax return is not required to
13 be filed for an estate (i) whose beneficiaries are all either
14 Class A beneficiaries, as described in G.S. 105-4(a), or the
15 surviving spouse, and (ii) whose gross value, including the value
16 of transfers over which the decedent retained an interest and the
17 value of gifts made within three years before the decedent's
18 death, as provided in G.S. 105-2(3), 105-2(a)(3), is less than
19 the amount specified in the following table:
20 Estates of Decedents Dying
21 On or After Gross Value of Estates
22 July 1, 1985 ..... \$100,000
23 August 1, 1985 ..... 75,000

1            July 1, 1986 ..... 150,000  
 2            January 1, 1987 ..... 250,000."

3            Sec. 4. G.S. 105-113.82(e) reads as rewritten:

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

8            Sec. 5. G.S. 105-125 reads as rewritten:

9            "~~§ 105-125. Corporations not mentioned. Exempt corporations.~~

10           ~~None of the taxes levied in this Article shall apply to~~  
 11 ~~charitable, religious, fraternal, benevolent, scientific or~~  
 12 ~~educational corporations, not operating for a profit; nor to~~  
 13 ~~insurance companies; nor to mutual ditch or irrigation~~  
 14 ~~associations, mutual or cooperative telephone associations or~~  
 15 ~~companies, mutual canning associations, cooperative breeding~~  
 16 ~~associations, or like organizations or associations of a purely~~  
 17 ~~local character deriving receipts solely from assessments, dues,~~  
 18 ~~or fees collected from members for the sole purpose of meeting~~  
 19 ~~expenses; nor to cooperative marketing associations operating~~  
 20 ~~solely for the purpose of marketing the products of members or~~  
 21 ~~other farmers, which operations may include activities which are~~  
 22 ~~directly related to such marketing activities, and turning back~~  
 23 ~~to them the proceeds of sales, less the necessary operating~~  
 24 ~~expenses of the association, including interest and dividends on~~  
 25 ~~capital stock on the basis of the quantity of product furnished~~  
 26 ~~by them; nor to production credit associations organized under~~  
 27 ~~the act of Congress known as the Farm Credit Act of 1933; nor to~~  
 28 ~~business leagues, boards of trade, clubs organized and operated~~  
 29 ~~exclusively for pleasure, recreation and other nonprofitable~~  
 30 ~~purposes, civic leagues operated exclusively for the promotion of~~  
 31 ~~social welfare, or chambers of commerce and merchants'~~  
 32 ~~associations not organized for profit, and no part of the net~~  
 33 ~~earnings of which inures to the benefit of any private~~  
 34 ~~stockholder, individual or other corporations; nor to~~  
 35 ~~corporations or organizations, such as condominium associations,~~  
 36 ~~homeowner associations or cooperative housing corporations not~~  
 37 ~~organized for profit, the membership of which is limited to the~~  
 38 ~~owners or occupants of residential units in the condominium,~~  
 39 ~~housing development, or cooperative housing corporation, and~~  
 40 ~~operated exclusively for the management, operation, preservation,~~  
 41 ~~maintenance or landscaping of the common areas and facilities~~  
 42 ~~owned by such corporation or organization or its members situated~~  
 43 ~~contiguous to such houses, apartments or other dwellings or for~~  
 44 ~~the management, operation, preservation, maintenance and repair~~

~~1 of such houses, apartments or other dwellings owned by the  
2 corporation or organization or its members, but only if no part  
3 of the net earnings of such corporation or organization inures  
4 (other than through the performance of related services for the  
5 members of such corporation or organization) to the benefit of  
6 any member of such corporation or organization or other person.  
7 In addition, absent a specific provision to the contrary, the  
8 taxes levied in this Article do not apply to any organization  
9 that is exempt from federal income tax under the Code.~~

~~10 Provided, that each such corporation must, upon request by the  
11 Secretary of Revenue, establish in writing its claim for  
12 exemption from said provisions.~~

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

- 17 (1) A charitable, religious, fraternal, benevolent,  
18 scientific, or educational corporation not operated  
19 for profit.
- 20 (2) An insurance company subject to tax under Article  
21 8B of this Chapter.
- 22 (3) A mutual ditch or irrigation association, a mutual  
23 or cooperative telephone association or company, a  
24 mutual canning association, a cooperative breeding  
25 association, or a similar corporation of a purely  
26 local character deriving receipts solely from  
27 assessments, dues, or fees collected from members  
28 for the sole purpose of meeting expenses.
- 29 (4) A cooperative marketing association that operates  
30 solely for the purpose of marketing the products of  
31 members or other farmers and returns to the members  
32 and farmers the proceeds of sales, less the  
33 association's necessary operating expenses,  
34 including interest and dividends on capital stock,  
35 on the basis of the quantity of product furnished  
36 by them. The association's operations may include  
37 activities directly related to these marketing  
38 activities.
- 39 (5) A production credit association organized under the  
40 federal Farm Credit Act of 1933.
- 41 (6) A club organized and operated exclusively for  
42 pleasure, recreation, or other nonprofit purposes,  
43 a civic league operated exclusively for the

- 1                    promotion of social welfare, a business league, or  
2                    a board of trade.
- 3            (7)    A chamber of commerce or merchants' association not  
4                    organized for profit, no part of the net earnings  
5                    of which inures to the benefit of a private  
6                    stockholder, an individual, or another corporation.
- 7            (8)    An organization, such as a condominium association,  
8                    a homeowner association, or a cooperative housing  
9                    corporation not organized for profit, the  
10                   membership of which is limited to the owners or  
11                   occupants of residential units in the condominium,  
12                   housing development, or cooperative housing  
13                   corporation. To qualify for the exemption, the  
14                   organization must be operated exclusively for the  
15                   management, operation, preservation, maintenance,  
16                   or landscaping of the residential units owned by  
17                   the organization or its members or of the common  
18                   areas and facilities that are contiguous to the  
19                   residential units and owned by the organization or  
20                   by its members. To qualify for the exemption, no  
21                   part of the net earnings of the organization may  
22                   inure, other than through the performance of  
23                   related services for the members of the  
24                   organization, to the benefit of any person.
- 25            (9)    Except as otherwise provided by law, an  
26                   organization exempt from federal income tax under  
27                   the Code.

28    ~~The provisions of G.S. 105-122 shall apply to electric light,~~  
29 ~~power, gas, water, Pullman, sleeping and dining car, express,~~  
30 ~~telegraph, telephone, motor bus, and truck corporations to the~~  
31 ~~extent and only to the extent that the franchise taxes levied in~~  
32 ~~G.S. 105-122 exceed the franchise taxes levied in other sections~~  
33 ~~of this Article or schedule; except that the provisions of G.S.~~  
34 ~~105-122 shall not apply to businesses taxed under G.S. 105-120.1.~~  
35 ~~The exemptions in this section shall apply only to those~~  
36 ~~corporations specially mentioned, and no other.~~

37    (b) Certain Investment Companies. -- A Provided, that any  
38 corporation doing business in North Carolina that, which in the  
39 opinion of the Secretary of Revenue of North Carolina, qualifies  
40 as a 'regulated investment company' under section 851 of the Code  
41 or as a 'real estate investment trust' under the provisions of  
42 section 856 of the Code and which files with the North Carolina  
43 Department of Revenue its election elects for federal income tax  
44 purposes to be treated as a 'regulated investment company' or as

1 a 'real estate investment trust,' ~~shall~~ may, in determining its  
2 basis for franchise ~~tax be allowed to tax~~, deduct the aggregate  
3 market value of its investments in the stocks, bonds, debentures,  
4 or other securities or evidences of debt of other corporations,  
5 partnerships, individuals, municipalities, governmental ~~agencies~~  
6 agencies, or governments."

7 Sec. 6. G.S. 105-114(a) reads as rewritten:

8 "(a) Nature of Taxes. The taxes levied in this Article upon  
9 persons and partnerships are for the privilege of engaging in  
10 business or doing the act named. The taxes levied in this  
11 Article upon corporations are privilege or excise taxes levied  
12 upon:

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

20 (2) Corporations not organized under the laws of this  
21 State for doing business in this State and for the  
22 benefit and protection which such corporations  
23 receive from the government and laws of this State  
24 in doing business in this State.

25 If the corporation is organized under the laws of this State,  
26 the payment of the taxes levied by this Article shall be a  
27 condition precedent to the right to continue in such form of  
28 organization; and if the corporation is not organized under the  
29 laws of this State, payment of these taxes shall be a condition  
30 precedent to the right to continue to engage in doing business in  
31 this State. The taxes levied in this Article or schedule shall  
32 be for the fiscal year of the State in which the taxes become  
33 due; except that the taxes levied in G.S. 105-122 shall be for  
34 the income year of the corporation in which the taxes become due.

35 G.S. 105-122 does not apply to street transportation systems  
36 taxed under G.S. 105-120.1 or holding companies taxed under G.S.  
37 105-120.2. G.S. 105-122 applies to a corporation taxed under  
38 another section of this Article only to the extent the taxes  
39 levied on the corporation in G.S. 105-122 exceed the taxes levied  
40 on the corporation in other sections of this Article."

41 Sec. 7. G.S. 105-127 is amended by adding at the end a  
42 new subsection to read:

43 "(f) After the end of the income year in which a domestic  
44 corporation is dissolved pursuant to Article 14 of Chapter 55 of

1 the General Statutes, the corporation is no longer subject to the  
2 tax levied in this Article unless the Secretary of Revenue finds  
3 that the corporation has engaged in business activities in this  
4 State not appropriate to winding up and liquidating its business  
5 and affairs."

6 Sec. 8. G.S. 105-130.40(c) reads as rewritten:

7 "(c) County Designation. -- A severely distressed county is a  
8 county designated as severely distressed by the Secretary of  
9 Commerce. Each year, on or before December 31, the Secretary of  
10 Commerce shall designate which counties are considered severely  
11 distressed, and shall provide that information to the Secretary  
12 of Revenue. A county is considered severely distressed if its  
13 distress factor is one of the thirty-three highest in the State.  
14 The Secretary shall assign to each county in the State a distress  
15 factor that is the sum of the following:

- 16 (1) The county's rank in a ranking of counties by rate  
17 of unemployment from lowest to highest.  
18 (2) The county's rank in a ranking of counties by per  
19 capita income from highest to lowest.  
20 (3) The county's rank in a ranking of counties by  
21 percentage growth in population from lowest to  
22 highest.

23 In measuring rates of unemployment and per capita income, the  
24 Secretary shall use the latest available data published by a  
25 State or federal agency generally recognized as having expertise  
26 concerning the data. In measuring population growth, the  
27 Secretary shall use the most recent estimates of population  
28 certified by the State Budget Planning Officer. A designation as  
29 a severely distressed county is effective only for the calendar  
30 year following the designation."

31 Sec. 9. G.S. 105-134.6(b) is amended by adding at the  
32 end a new subdivision to read:

33 "(10) Income that is (i) earned or received by an  
34 enrolled member of a federally recognized Indian  
35 tribe and (ii) derived from activities on a  
36 federally recognized Indian reservation while the  
37 member resides on the reservation. Income from  
38 intangibles having a situs on the reservation and  
39 retirement income associated with activities on  
40 the reservation are considered income derived from  
41 activities on the reservation."

42 Sec. 10. G.S. 105-134.7(a)(5) reads as rewritten:

43 "(5) The amount of any If the taxpayer has a net  
44 operating loss for a taxable year beginning on or



1 after January 1, 1989, that part of the loss that  
2 is carried back to and deducted in a taxable year  
3 beginning before January 1, 1989, pursuant to  
4 section 172 of the Code may be deducted from  
5 taxable income in the taxable year following the  
6 taxable year for which the loss occurred."

7 Sec. 11. G.S. 105-151.17(c) reads as rewritten:

8 "(c) County Designation. -- A severely distressed county is a  
9 county designated as severely distressed by the Secretary of  
10 Commerce. Each year, on or before December 31, the Secretary of  
11 Commerce shall designate which counties are considered severely  
12 distressed, and shall provide that information to the Secretary  
13 of Revenue. A county is considered severely distressed if its  
14 distress factor is one of the thirty-three highest in the State.  
15 The Secretary shall assign to each county in the State a distress  
16 factor that is the sum of the following:

- 17 (1) The county's rank in a ranking of counties by rate  
18 of unemployment from lowest to highest.  
19 (2) The county's rank in a ranking of counties by per  
20 capita income from highest to lowest.  
21 (3) The county's rank in a ranking of counties by  
22 percentage growth in population from lowest to  
23 highest.

24 In measuring rates of unemployment and per capita income, the  
25 Secretary shall use the latest available data published by a  
26 State or federal agency generally recognized as having expertise  
27 concerning the data. In measuring population growth, the  
28 Secretary shall use the most recent estimates of population  
29 certified by the State Budget Planning Officer. A designation as  
30 a severely distressed county is effective only for the calendar  
31 year following the designation."

32 Sec. 12. G.S. 105-163.010(8) reads as rewritten:

33 "(8) Qualified grantee business. -- A North Carolina  
34 business that (i) has received during the preceding  
35 three years a grant or other funding from the North  
36 Carolina Technological Development Authority, The  
37 North Carolina Technological Development Authority,  
38 Inc., the North Carolina Biotechnology Center, the  
39 Microelectronics Center of North Carolina, or the  
40 Federal Small Business Innovation Research Program,  
41 and (ii) is registered with the Secretary of State  
42 under G.S. 105-163.013."

43 Sec. 13. G.S. 105-163.013(c)(3) reads as rewritten:

1           "(3) It has received during the preceding three years a  
2           grant or other funding from the North Carolina  
3           Technological Development Authority, The North  
4           Carolina Technological Development Authority, Inc.,  
5           the North Carolina Biotechnology Center, the  
6           Microelectronics Center of North Carolina, or the  
7           Federal Small Business Innovation Research Program.

8           Sec. 14. G.S. 105-187.19 reads as rewritten:

9   "**§ 105-187.19. Use of tax proceeds.**

10   The Secretary shall distribute the taxes collected under this  
11   Article, less the cost of collecting the taxes, in accordance  
12   with this section. The Secretary shall retain the cost of  
13   collection as reimbursement to the Department of Revenue.

14   Each quarter, the Secretary shall credit ten percent (10%) of  
15   the net tax proceeds to the Solid Waste Management Trust Fund and  
16   shall distribute ninety percent (90%) of the net tax proceeds  
17   among the counties on a per capita basis according to the most  
18   recent annual population estimates certified to the Secretary by  
19   the ~~Office of State Budget and Management.~~ State Planning  
20   Officer. A county may use funds distributed to it under this  
21   section only as provided in G.S. 130A-309.54."

22           Sec. 15. G.S. 105-266.1(c) reads as rewritten:

23   (c) Within 90 days after notification of the Secretary's  
24   decision with respect to a demand for refund of any tax or  
25   additional tax under this ~~section any taxpayer aggrieved thereby,~~  
26   ~~in lieu~~ section, an aggrieved taxpayer may, instead of  
27   petitioning for administrative review by the Tax Review Board  
28   under G.S. ~~105-241.1, may 105-241.2,~~ bring a civil action against  
29   the Secretary of Revenue for recovery of the alleged overpayment  
30   overpayment. If the alleged overpayment is more than two hundred  
31   dollars (\$200.00), the taxpayer may bring the action either in  
32   the Superior Court of Wake County, County or in the superior  
33   court of the county in which the taxpayer resides, if the alleged  
34   overpayment exceeds two hundred dollars (\$200.00), and if  
35   resides; if the alleged overpayment is two hundred dollars  
36   (\$200.00) or less, the taxpayer may bring the action in any State  
37   court of competent jurisdiction in Wake County. If upon trial it  
38   ~~shall be~~ is determined that there has been ~~any an~~ an overpayment of  
39   tax or additional tax, judgment shall be rendered therefor, with  
40   interest, and the ~~same shall be refunded by the State.~~ State  
41   shall refund the amount due.

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

43   "**§ 105-269.3. ~~Administration and enforcement~~ Enforcement of**  
44   **Subchapter V and fuel inspection fee.**

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

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

13 "(e) Population Estimates. -- In making the per capita  
14 calculations under this section, the Secretary shall use the most  
15 recent annual population estimates certified by the State Budget  
16 Planning Officer."

17 Sec. 18. G.S. 105-285(b) reads as rewritten:

18 "(b) Personal Property; General Rule. -- Except as otherwise  
19 provided in subsection (c) below, this Chapter, the value,  
20 ownership, and place of taxation of personal property, both  
21 tangible and intangible, shall be determined annually as of  
22 January 1."

23 Sec. 19. Effective on and after January 1, 1993, G.S.  
24 105-330.1 reads as rewritten:

25 "§ 105-330.1. Classification of motor vehicles.

26 (a) Classification. -- All motor vehicles, except (i) motor  
27 vehicles exempt from registration pursuant to G.S. 20-51, (ii)  
28 manufactured homes, mobile classrooms, and mobile offices, (iii)  
29 semitrailers registered on a multiyear basis under G.S. 20-88(c),  
30 and (iv) motor vehicles owned or leased by a public service  
31 company and appraised under G.S. 105-335, are hereby vehicles  
32 other than the motor vehicles listed in subsection (b) are  
33 designated a special class of property under authority of Article  
34 V, Sec. 2(2) of the North Carolina Constitution. Classified  
35 motor vehicles shall be listed and assessed as provided in this  
36 Article and taxes on classified motor vehicles shall be collected  
37 as provided in this Article.

38 (b) Exceptions. -- The following motor vehicles are not  
39 classified under subsection (a):

- 40 (1) Motor vehicles exempt from registration pursuant to  
41 G.S. 20-51.  
42 (2) Manufactured homes, mobile classrooms, and mobile  
43 offices.

1           (3) Semitrailers registered on a multiyear basis under  
2           G.S. 20-88(c).

3           (4) Motor vehicles owned or leased by a public service  
4           company and appraised under G.S. 105-335.

5           (5) 'U-drive-it' passenger vehicles registered under  
6           G.S. 20-87(2)."

7           Sec. 20. G.S. 105-395(c) reads as rewritten:

8           "(c) It is the intent of the General Assembly to make the  
9 provisions of this Subchapter (~~being G.S. 105-291 [105-271]~~  
10 ~~through 105-395, inclusive~~) uniformly applicable throughout the  
11 State, and to assure this objective all laws and clauses of laws,  
12 including private and local acts (except acts, other than local  
13 acts relating to the selection of tax collectors), collectors, in  
14 conflict with ~~the provisions of this Subchapter shall, as of July~~  
15 ~~1, 1971, be and are hereby repealed.~~ repealed effective July 1,  
16 1971. As used in this section, the term 'local acts' means any  
17 acts of the General Assembly that apply to one or more counties  
18 by name, to one or more municipalities by name, or to all  
19 municipalities within one or more named counties."

20           Sec. 21. G.S. 105-441(a) reads as rewritten:

21           "(a) Acts. -- Any distributor who commits one or more of the  
22 following acts is guilty of a misdemeanor:

23           (1) Fails to obtain a license required by this Article.

24           (2) Willfully fails to make a report required by this  
25 Article.

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

28           (4) Makes a false statement in an application, a  
29 report, or a statement required under this Article.

30           (5) Fails to keep records as required under this  
31 Article.

32           (6) Refuses to allow the Secretary of Revenue or a  
33 representative of the Secretary of Revenue to  
34 examine the distributor's books and records  
35 concerning motor fuel.

36           (7) Fails to disclose the correct amount of motor fuel  
37 sold or used in this State.

38           (8) Fails to file a replacement bond or an additional  
39 bond as required under this Article.

40           On conviction, a distributor shall be fined not less than one  
41 hundred dollars (\$100.00) and not more than five thousand dollars  
42 (\$5,000) or, in the case of an individual or the officer or  
43 employee charged with the duty of making a report for a  
44 corporation, imprisoned not exceeding 24 months, or both."

1           Sec. 22. G.S. 105-449.34 reads as rewritten:

2 "§ 105-449.34. Acts and omissions declared to be ~~misdemeanors;~~  
3 ~~penalties, misdemeanors.~~

4     A person who commits one or more of the following acts is  
5 guilty of a misdemeanor:

- 6           (1) Fails to obtain a license required by this Article.
- 7           (2) Willfully fails to make a report required by this  
8           Article.
- 9           (3) Willfully fails to pay a tax when due under this  
10           Article.
- 11           (4) Makes a false statement in an application, a  
12           report, or a statement required under this Article.
- 13           (5) Fails to keep records as required under this  
14           Article.
- 15           (6) Refuses to allow the Secretary of Revenue or a  
16           representative of the Secretary of Revenue to  
17           examine the licensee's books and records concerning  
18           fuel.
- 19           (7) Fails to disclose the correct amount of fuel sold  
20           or used in this State.
- 21           (8) Fails to file a replacement bond or an additional  
22           bond as required under this Article."

23           Sec. 23. G.S. 105-466(d) reads as rewritten:

24     "~~(d) The board of county commissioners, upon adoption of said~~  
25 ~~resolution, shall cause a certified copy of the resolution to be~~  
26 ~~delivered immediately to the Secretary of Revenue, Upon adoption~~  
27 ~~of a resolution levying the tax, the board of county~~  
28 ~~commissioners shall immediately deliver a certified copy of the~~  
29 ~~resolution to the Secretary, accompanied by a certified statement~~  
30 ~~from the county board of elections, if applicable, setting forth~~  
31 ~~the results of any special election approving the tax in the~~  
32 ~~county. Thereupon, the Secretary of Revenue shall proceed as~~  
33 ~~authorized in this Article to administer the tax in such county,~~  
34 ~~unless said county board of commissioners shall notify the~~  
35 ~~Secretary of Revenue in writing that, pursuant to a resolution~~  
36 ~~duly adopted by said Board, the tax will be collected and~~  
37 ~~administered by the taxing county. Upon receipt of these~~  
38 ~~documents, the Secretary shall collect and administer the tax as~~  
39 ~~provided in this Article."~~

40           Sec. 24. G.S. 105-469 reads as rewritten:

41 "~~§ 105-469. Collection and administration of local sales and use~~  
42 ~~tax; authorization to promulgate rules and regulations. Secretary~~  
43 ~~to collect and administer local sales and use tax.~~

~~1 Unless the county board of commissioners shall have notified  
2 the Secretary to the contrary, as provided in G.S. 105-466(d),  
3 the Secretary of Revenue The Secretary shall collect and  
4 administer the local sales and use tax imposed by a taxing a tax  
5 levied by a county pursuant to the provisions of this Article and  
6 shall be charged with the duty of administering the local sales  
7 and use tax authorized to be imposed by this Article. In addition  
8 to the present statutory provisions authorizing the Secretary of  
9 Revenue to adopt and promulgate rules and regulations pertaining  
10 to the administration and collection of taxes, the Secretary of  
11 Revenue is empowered to promulgate such additional rules and  
12 regulations as are necessary and proper for the implementation of  
13 this Article."~~

14 Sec. 25. G.S. 105-472 reads as rewritten:

15 "§ 105-472. Disposition and distribution of taxes collected.

16 (a) County Allocation. -- The Secretary shall, on a quarterly  
17 basis, allocate to each taxing county for which the Secretary  
18 collects the tax the net proceeds of the tax collected in that  
19 county under this Article. For the purpose of this section, 'net  
20 proceeds' means the gross proceeds of the tax collected in each  
21 county under this Article less taxes refunded, the cost to the  
22 State of collecting and administering the tax in the county as  
23 determined by the Secretary, and other deductions that may be  
24 charged to the county. If the Secretary collects local sales or  
25 use taxes in a month and the taxes cannot be identified as being  
26 attributable to a particular taxing county, the Secretary shall  
27 allocate the taxes among the taxing counties in proportion to the  
28 amount of taxes collected in each county under this Article  
29 during that month and shall include them in the quarterly  
30 distribution.

31 ~~With respect to the counties in which he shall collect and~~  
32 ~~administer the tax, the Secretary of Revenue shall, on a~~  
33 ~~quarterly basis, distribute to each taxing county and to the~~  
34 ~~municipalities therein the net proceeds of the tax collected in~~  
35 ~~that county under this Article which amount shall be determined~~  
36 ~~by deducting taxes refunded, the cost to the State of collecting~~  
37 ~~and administering the tax in the taxing county and such other~~  
38 ~~deductions as may be properly charged to the taxing county, from~~  
39 ~~the gross amount of the tax remitted to the Secretary of Revenue~~  
40 ~~from the taxing county. The Secretary shall determine the cost~~  
41 ~~of collection and administration, and that amount shall be~~  
42 ~~retained by the State before distribution of the net proceeds of~~  
43 ~~the tax. For the purposes of this Article, "municipalities"~~  
44 ~~shall mean cities as defined by G.S. 153A-1(1).~~

1     **(b) Distribution Between Counties and Cities.** -- The Secretary  
2 shall divide the amount allocated to each taxing county among the  
3 county and its municipalities in accordance with the method  
4 determined by the county. The board of county commissioners  
5 shall, in the resolution levying the tax, determine that the net  
6 proceeds of the tax shall be distributed in one of the following  
7 methods and thereafter said proceeds shall be distributed in  
8 accordance therewith: by resolution, choose one of the following  
9 methods of distribution:

10           (1) **Per Capita Method.** -- The amount distributable to  
11 a taxing county and to the municipalities therein  
12 from the net proceeds of the tax collected therein  
13 shall be determined upon the following basis: The  
14 net proceeds of the tax collected in a taxing  
15 county shall be distributed to that taxing county  
16 and to the municipalities therein upon in the  
17 county on a per capita basis according to the total  
18 population of the taxing county, plus the total  
19 population of the municipalities in the county. In  
20 the case of a municipality located in more than one  
21 county, only that part of its population living in  
22 the taxing county is considered its 'total  
23 population.' therein; provided, however, that  
24 "total population" of a municipality lying within  
25 more than one county shall be only that part of its  
26 population which lives within the taxing county.  
27 For this purpose, the Secretary of Revenue in order  
28 to make the distribution, the Secretary shall  
29 determine a per capita figure by dividing the net  
30 proceeds of the tax collected under this Article  
31 for the preceding quarter within a amount allocated  
32 to each taxing county by the total population of  
33 that taxing county plus the total population of all  
34 municipalities therein in the county. according to  
35 the most recent annual estimates of population as  
36 certified to the Secretary of Revenue by the State  
37 Budget Officer. The per capita figure thus derived  
38 shall be multiplied. The Secretary shall then  
39 multiply this per capita figure by the population  
40 of the taxing county and by the population of each  
41 respective municipality therein according to the  
42 most recent annual estimates of population as  
43 certified to the Secretary of Revenue by the State  
44 Budget Officer, and in the county; each respective

1 product shall be the amount to be distributed to  
2 ~~each taxing the~~ county and to each municipality  
3 ~~therein in the county.~~ To determine the  
4 population of each county and each municipality,  
5 the Secretary shall use the most recent annual  
6 estimate of population certified by the State  
7 Planning Officer. ~~The State Budget Officer shall~~  
8 ~~annually cause to be prepared and shall certify to~~  
9 ~~the Secretary of Revenue such reasonably accurate~~  
10 ~~population estimates of all counties and~~  
11 ~~municipalities in the State as may be practicably~~  
12 ~~developed; or~~

13 (2) Ad Valorem Method. -- The net proceeds of the tax  
14 collected in a taxing county shall be ~~divided~~  
15 ~~between the~~ distributed to that county and the  
16 municipalities ~~therein in the county~~ in proportion  
17 to the total amount of ad valorem taxes levied by  
18 each on property having a tax situs in the taxing  
19 county during the fiscal year next preceding ~~such~~  
20 the distribution. For purposes of this section,  
21 the amount of the ad valorem taxes levied by ~~such a~~  
22 county or municipality ~~shall include any~~ includes  
23 ad valorem taxes levied by ~~such the~~ county or  
24 municipality in behalf of a taxing district ~~or~~  
25 ~~districts~~ and collected by the county or  
26 municipality. In addition, the amount of taxes  
27 levied by a county ~~shall include any~~ includes ad  
28 valorem taxes levied by a merged school  
29 administrative unit described in G.S. 115C-513 in  
30 the part of the unit located in the county. In  
31 computing the amount of tax proceeds to be  
32 distributed to ~~any county or~~ each county and  
33 municipality, the amount of any ad valorem taxes  
34 levied but not substantially collected shall be  
35 ignored. Each county and municipality receiving a  
36 ~~distributable share of the sales and use~~  
37 distribution of the proceeds of the tax levied  
38 under this Article shall in turn immediately share  
39 the proceeds with any district or districts each  
40 district in behalf of which the county or  
41 municipality levied ad valorem taxes in the  
42 proportion that the district levy bears to the  
43 total levy of the county or municipality. Any  
44 county or municipality ~~which~~ that fails to provide



1 the Department of Revenue with information  
2 concerning ad valorem taxes levied by ~~that county~~  
3 ~~or municipality~~ it adequate to permit a timely  
4 determination of ~~the~~ its appropriate share of ~~that~~  
5 ~~county or municipality~~ of tax proceeds collected  
6 under this Article may be excluded by the Secretary  
7 from each quarterly distribution with respect to  
8 which ~~such~~ the information was not provided in a  
9 timely manner, and ~~such~~ those tax proceeds shall  
10 then be distributed only to the ~~governmental unit~~  
11 ~~or units whose information was provided in a timely~~  
12 ~~manner.~~ remaining counties or municipalities, as  
13 appropriate. For the purpose of computing the  
14 distribution of the tax under this subsection to  
15 any county and the municipalities located ~~therein~~  
16 in the county for any quarter with respect to which  
17 the property valuation of a public service company  
18 is the subject of an appeal ~~pursuant to the~~  
19 ~~provisions of the Machinery Act, or to applicable~~  
20 ~~provisions of federal law,~~ and the Department of  
21 Revenue is restrained by ~~operation of law or by a~~  
22 ~~court of competent jurisdiction~~ from certifying  
23 ~~such~~ the valuation to the county and the  
24 municipalities ~~therein,~~ in the county, the  
25 Department shall use the last property valuation of  
26 ~~such~~ the public service company which ~~that~~ has been  
27 ~~so certified in order to determine the ad valorem~~  
28 ~~tax levies applicable to such public service~~  
29 ~~company in the county and the municipalities~~  
30 ~~therein, certified.~~

31 ~~Where local use taxes, levied pursuant to this Article, or to~~  
32 ~~any other local sales tax act, which cannot be identified as~~  
33 ~~being attributable to any particular taxing county are collected~~  
34 ~~and remitted to the Secretary, he shall apportion said taxes to~~  
35 ~~the taxing counties in the same proportion that the local sales~~  
36 ~~and use taxes collected each month in a taxing county bears to~~  
37 ~~the total local sales and use taxes collected in all taxing~~  
38 ~~counties each month during the quarter for which a distribution~~  
39 ~~is to be made, and the total net proceeds shall then be~~  
40 ~~distributed as above provided.~~

41 The board of county commissioners in each taxing county shall,  
42 by resolution adopted during the month of April of each year,  
43 determine which of the two foregoing methods of distribution  
44 shall be in effect in the county during the next succeeding

1 fiscal year. In order for ~~such~~ the resolution to be effective, a  
2 certified copy ~~thereof~~ of it must be delivered to the Secretary  
3 ~~of Revenue at his office~~ in Raleigh within 15 calendar days after  
4 its adoption. If the board fails to adopt ~~any a~~ resolution ~~or if~~  
5 ~~it fails to adopt~~ choosing a method of distribution not then in  
6 effect in the county, or if a certified copy of the resolution is  
7 not timely delivered to the Secretary, the method of distribution  
8 then in effect in the county shall continue in effect for the  
9 following fiscal year. The method of distribution in effect on  
10 the first of July of each fiscal year shall apply to every  
11 distribution made during that fiscal year.

12 (c) Municipality Defined. -- As used in this Article, the term  
13 'municipality' means 'city' as defined in G.S. 153A-1."

14 Sec. 26. G.S. 105-482 reads as rewritten:

15 "§ 105-482. Limitations.

16 This Article applies only to counties that levy one percent  
17 (1%) sales and use taxes under Article 39 of this Chapter or  
18 under Chapter 1096 of the 1967 Session ~~Laws and do not levy~~  
19 ~~one-half percent (1/2%) local sales and use taxes under Article~~  
20 ~~41 of this Chapter.~~ Laws."

21 Sec. 27. G.S. 105-483 reads as rewritten:

22 "§ 105-483. Levy and collection of additional taxes.

23 Any county subject to this Article may levy one-half percent  
24 (1/2%) local sales and use taxes in addition to any other State  
25 and local sales and use taxes levied pursuant to law. Except as  
26 provided in this Article, the adoption, levy, collection,  
27 distribution, administration, and repeal of these additional  
28 taxes shall be in accordance with Article 39 of this Chapter. In  
29 applying the provisions of Article 39 of this Chapter to this  
30 Article, references to 'this Article' mean Article 40 of ~~Chapter~~  
31 ~~105.~~ this Chapter. ~~All taxes levied pursuant to this Article~~  
32 ~~shall be collected by the Secretary and may not be collected by a~~  
33 ~~taxing county.~~ The exemption for building materials in G.S.  
34 105-468.1 does not apply to taxes levied under this Article."

35 Sec. 28. G.S. 105-498 reads as rewritten:

36 "§ 105-498. Levy and collection of additional taxes.

37 Any county subject to this Article may levy one-half percent  
38 (1/2%) local sales and use taxes in addition to any other State  
39 and local sales and use taxes levied pursuant to law. Except as  
40 provided in this Article, the adoption, levy, collection,  
41 distribution, administration, and repeal of these additional  
42 taxes shall be in accordance with Article 39 of this Chapter. In  
43 applying the provisions of Article 39 of this Chapter to this  
44 Article, references to "this Article" mean Article 42 of ~~Chapter~~

1 ~~105. this Chapter. All taxes levied pursuant to this Article~~  
2 ~~shall be collected by the Secretary and may not be collected by a~~  
3 ~~taxing county. The exemption for building materials in G.S.~~  
4 ~~105-468.1 does not apply to taxes levied under this Article."~~

5           Sec. 29. G.S. 160A-623(h) reads as rewritten:

6       "(h) Tax Situs. -- ~~The fact that the county listed by the~~  
7 ~~owner under G.S. 105-314 as the county where the vehicle is~~  
8 ~~subject to ad valorem taxation is within the territorial~~  
9 ~~jurisdiction of the Authority shall be prima facie evidence that~~  
10 ~~the vehicle has a tax situs within the territorial jurisdiction~~  
11 ~~of the Authority. The tax situs of a motor vehicle for the~~  
12 ~~purpose of this section is its ad valorem tax situs. If the~~  
13 ~~vehicle is exempt from ad valorem tax, its tax situs for the~~  
14 ~~purpose of this section is the ad valorem tax situs it would have~~  
15 ~~if it were not exempt from ad valorem tax."~~

16           Sec. 30. Except as otherwise provided in this act, this  
17 act is effective upon ratification. Sections 21 and 22 of this  
18 act apply to offenses committed on or after the date of  
19 ratification.



## Explanation of Proposal 16

Legislative Proposal 16 makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes.

<u>Section</u>	<u>Explanation</u>
1	Repeals a Session Law that is ineffective because the language it amended had already been deleted by an earlier Session Law.
2	Deletes a reference to high school insignia plates in the catchline of a statute; the body of the statute does not contain any provisions relating to high school insignia plates.
3	Corrects an incorrect cross-reference. This change was requested by the Department of Revenue.
4	Makes a conforming change to reflect the fact that official population estimates that were formally certified by the State Budget Officer are now certified by the State Planning Officer.
5	Removes inaccurate provisions regarding the scope of G.S. 105-122 contained in the franchise tax exemptions statute and reorganizes and clarifies the language of the statute. The removed provisions are corrected and placed in the appropriate statute in Section 6.
6	Corrects inaccurate provisions regarding the scope of G.S. 105-122 and places the provisions in the appropriate introductory statute applicable to franchise taxes.
7	G.S. 55-14-05(c) of the Business Corporation Act provides that a corporation that dissolves does not owe franchise tax unless it engages in business activities during the tax year. This section adds the same provision to the franchise tax law. The Department of Revenue is currently administering the law in accordance with this provision. This change was requested by the Department of Revenue.
8	Makes a conforming change to reflect the fact that official population estimates that were formally certified by the State Budget Officer are now certified by the State Planning Officer.

<u>Section</u>	<u>Explanation</u>
9	The federal courts have held that North Carolina cannot tax income earned by a member of a federally recognized Indian tribe from activities on the reservation. This section adds to the individual income tax statutes a provision explicitly recognizing that rule of law. This change was requested by the Department of Revenue.
10	Clarifies ambiguous language in accordance with the correct interpretation by the Department of Revenue.
11	Makes a conforming change to reflect the fact that official population estimates that were formally certified by the State Budget Officer are now certified by the State Planning Officer.
12 - 13	The functions of the former North Carolina Technological Development Authority are now performed by a private nonprofit corporation, the North Carolina Technological Development Authority, Inc. These sections add a necessary reference to the new corporation; the reference to the former agency can be deleted in two more years. This change was requested by the Department of Revenue.
14	Makes a conforming change to reflect the fact that official population estimates that were formally certified by the State Budget Officer are now certified by the State Planning Officer.
15	Corrects an incorrect cross-reference and simplifies some awkward statutory language. This change was requested by the Department of Revenue.
16	Removes redundant language regarding the scope of Article 9 of Chapter 105 of the General Statutes. The scope of Article 9 is set out in G.S. 105-228.90.
17	Makes a conforming change to reflect the fact that official population estimates that were formally certified by the State Budget Officer are now certified by the State Planning Officer.
18	Deletes a reference to a repealed subsection.
19	Excludes short term rental vehicles from the new system for collecting property taxes on motor vehicles. The old system of taxation, in which the vehicles will be listed by the company, is more appropriate for these vehicles. This change was requested by the Department of Revenue and the Association of County Commissioners.
20	Removes incorrect and unnecessary cross-references.

<u>Section</u>	<u>Explanation</u>
21 - 22	Clarify that the penalty for failure to file an additional bond for motor fuel tax purposes also applies to failure to file a replacement bond. This change was requested by the Department of Revenue.
23	Removes a reference to a provision, repealed in Section 24, allowing counties to collect their own local sales and use taxes.
24	Repeals a provision allowing counties to collect their own local sales and use taxes.
25	Makes a conforming change to reflect the fact that official population estimates that were formally certified by the State Budget Officer are now certified by the State Planning Officer. Simplifies and clarifies awkward statutory language.
26 - 28	Remove references to a provision, repealed in Section 24, allowing counties to collect their own local sales and use taxes.
29	Deletes a reference to a repealed statute and substitutes the applicable provisions of that statute.
30	Provides that the act is effective upon ratification.





Proposal #16: Revenue Laws Technical Changes

Summary:

See previous detailed explanation prepared by committee counsel.

Effective Date:

Upon ratification

Fiscal Effect:

None



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 17 (93-LC-024(1.1))  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Sales Tax License Duration.

(Public)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT A SALES TAX LICENSE IS VOID IF THE  
3 RETAILER REPORTS NO SALES FOR EIGHTEEN MONTHS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 105-164.4(c) reads as rewritten:  
6 "(c) Any person who engages in any business for which a  
7 privilege tax is imposed by this Article shall apply for and  
8 obtain from the Secretary upon payment of fifteen dollars  
9 (\$15.00) a license to engage in and conduct the business upon the  
10 condition that the person shall pay the tax accruing to the State  
11 under this Article; the person shall thereby be duly licensed and  
12 registered to engage in the business. ~~Except as hereinafter~~  
13 ~~provided, a~~  
14 A license issued under this subsection shall be a continuing  
15 license until it becomes void or is revoked for failure to comply  
16 with the provisions of this Article. A Article. A license  
17 issued under this section to a person, other than a person who  
18 makes only wholesale sales or only exempt sales, becomes void if  
19 if, for a period of eighteen months, the license holder ceases to  
20 be engaged in a business for which a privilege tax is imposed by  
21 this Article and remains continuously out of business for a  
22 period of five years. The burden of proving that a license is  
23 still valid is on the license holder. files no return or files  
24 returns showing no sales.

1 A retailer who sells tangible personal property at a flea  
2 market shall conspicuously display ~~his~~ the retailer's sales tax  
3 license when making sales at the flea market."

4 Sec. 2. This act becomes effective July 1, 1993.

### Explanation of Proposal 17

Legislative Proposal 17 provides that a sales tax license becomes void if the licensed retailer reports no sales for a period of 18 months. The bill becomes effective July 1, 1993.

All sales of tangible personal property are presumed to be taxable (G.S. 105-164.26). A sale is not taxable if the buyer intends to resell the property. A person who sells property in a wholesale sale can negate the presumption that the sale is taxable by checking the buyer's certificate of resale. A certificate of resale states that the property bought is for resale, states the buyer's sales tax license number, and indicates the type of property the buyer sells in the regular course of business.

The Revenue Laws Study Committee received complaints from taxpayers about individuals who acquire a sales tax license and then fraudulently give a certificate of resale when purchasing property they have no intention of reselling. The Committee found no hard data indicating the extent to which this type of tax evasion occurs. The Committee felt that tax evaders will be deterred by a new penalty enacted in 1992 upon the recommendation of the Revenue Laws Study Committee. Chapter 914 of the 1991 Session Laws (1992 Session) added an additional penalty of \$250 to be assessed by the Secretary of Revenue against a buyer who misuses a certificate of resale, effective July 10, 1992.

A sales tax license is required of every person who engages in the retail or wholesale business. The license costs \$15 and, once issued, remains valid unless the license holder remains continuously out of business for five years. The Committee noted that increasing the \$15 license fee, or requiring periodic renewal of licenses, would place a burden on the many legitimate small retailers while having only a small impact on potential tax evaders. The Committee decided that the State could limit the number of non-retailers obtaining licenses for fraudulent purposes by providing that a license becomes void if the license holder makes no sales for an 18-month period. The Committee felt that all legitimate merchants would make at least some sales every 18 months. Legislative Proposal 17 implements this recommendation. The bill provides an exception for wholesalers and for license holders who make only exempt sales. The latter group includes civic organizations and other nonprofit associations who

occasionally sell items to raise funds; these license holders may go for long periods between fund-raising sales.

Proposal #17: Sales Tax License Duration

Summary:

This proposal provides that a sales tax license becomes void if the licensed retailer reports no sales for a period of 18 months.

This new expiration provision for sales tax licenses is expected to limit abuses by individuals who acquire these licenses for the fraudulent purpose of making personal purchases with resale certificates in order to avoid the sales tax.

Effective Date:

July 1, 1993

Fiscal Effect:

The Department of Revenue has estimated that enactment of this proposal would decrease General Fund revenues by an insignificant \$5,000 in FY 1993-94.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H

D

Proposal 18 (93-LC-002(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Merchants' Sales Tax Discount. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING  
3 STATE SALES AND USE TAXES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 105-164.21 is reenacted and rewritten  
6 to read:  
7 "§ 105-164.21. Discount for collecting and paying taxes when  
8 due.  
9 (a) Amount. -- Except as provided in subsection (b), a  
10 retailer who pays the retail sales or use tax imposed by this  
11 Article may deduct from the amount of the tax paid a discount of  
12 three percent (3%) of the first one thousand dollars (\$1,000) of  
13 tax paid per month and seven-tenths of one percent (7/10 of 1%)  
14 of the remaining tax paid per month up to the following maximum  
15 discounts:  
16 (1) One hundred dollars (\$100.00) per month for each  
17 place of business at a separate location.  
18 (2) For taxpayers who are required to report on a  
19 semimonthly basis, five thousand dollars (\$5,000)  
20 per semimonthly period for each retailer group.  
21 (3) For taxpayers who are not required to report on a  
22 semimonthly basis, ten thousand dollars (\$10,000)  
23 per month for each retailer group.

1 The discount for each location may be deducted only from the  
2 tax paid with regard to that location. For the purposes of this  
3 section, a retailer group includes all retail establishments that  
4 have one of the following relationships with one another: (i) one  
5 corporation owns, directly or indirectly, at least eighty percent  
6 (80%) of the voting stock of the others; (ii) at least eighty  
7 percent (80%) of the voting stock of the corporations is owned,  
8 directly or indirectly, by the same interests; or (iii) in the  
9 case of establishments that are not incorporated, the  
10 establishments are under the same general management,  
11 supervision, or ownership.

12 (b) Restrictions. -- The Secretary may deny a retailer the  
13 benefit of this section for failure to pay the full tax when due  
14 as well as in cases of fraud, evasion, or failure to keep  
15 accurate and clear records as required by this Article. In order  
16 to receive the discount provided in this section, a retailer must  
17 deduct the discount when it remits the tax to the Department of  
18 Revenue. A utility may not deduct the discount provided in this  
19 section on sales of electricity, piped natural gas, or  
20 telecommunications services."

21 Sec. 2. G.S. 105-474 reads as rewritten:

22 "§ 105-474. ~~Definitions; construction of Article; remedies and~~  
23 ~~penalties. Administration and construction of Article.~~

24 This Article shall be harmonized with the North Carolina Sales  
25 and Use Tax Act to the extent practical. The discount provided  
26 in G.S. 105-164.21 does not apply to this Article. The remaining  
27 provisions of Articles 5 and 9 of this Chapter apply to this  
28 Article to the extent they are consistent with this Article.

29 ~~The definitions set forth in G.S. 105-164.3 shall apply to this~~  
30 ~~Article insofar as such definitions are not inconsistent with the~~  
31 ~~provisions of this Article, and all other provisions of Article 5~~  
32 ~~and of Article 9 of Subchapter 1, Chapter 105 of the General~~  
33 ~~Statutes, as the same relate to the North Carolina Sales and Use~~  
34 ~~Tax Act shall be applicable to this Article unless such~~  
35 ~~provisions are inconsistent with the provisions of this Article.~~  
36 ~~The administrative interpretations made by the Secretary of~~  
37 ~~Revenue with respect to the North Carolina Sales and Use Tax Act,~~  
38 ~~to the extent not inconsistent with the provisions of this~~  
39 ~~Article, may be uniformly applied in the construction and~~  
40 ~~interpretation of this Article. It is the intention of this~~  
41 ~~Article that the provisions of this Article and the provisions of~~  
42 ~~the North Carolina Sales and Use Tax Act, insofar as practicable,~~  
43 ~~shall be harmonized.~~

~~1 The provisions with respect to remedies and penalties  
2 applicable to the North Carolina Sales and Use Tax Act, as  
3 contained in Article 5 and Article 9, Subchapter 1, Chapter 105  
4 of the General Statutes, shall be applicable in like manner to  
5 the tax authorized to be levied and collected under this Article,  
6 to the extent that the same are not inconsistent with the  
7 provisions of this Article."~~

8           Sec. 3. The first sentence of Section 10 of Chapter  
9 1096 of the 1967 Session Laws is amended by adding after the word  
10 "Act" the phrase ", other than G.S. 105-164.21,".

11           Sec. 4. This act becomes effective April 1, 1994, and  
12 applies to returns filed on or after that date.



### Explanation of Proposal 18

Until 1987, North Carolina allowed a retailer who collected sales and use taxes to retain a discount of three percent of the State and local taxes collected and remitted to the State. This allowance, known as the merchant's discount, was repealed by the School Facilities Finance Act of 1987 as part of a tax package that repealed the property tax on inventories and raised the corporate income tax from six percent to seven percent. In 1988, Senate Bill 1594 was introduced to restore a merchant's discount of three percent of the State (but not local) sales taxes collected, up to a maximum discount of two hundred dollars per month. The bill, which would have cost the State nearly thirty million dollars per year, passed the Senate but stalled in the House of Representatives.

After the 1988 Session, the 1987-88 Revenue Laws Study Committee heard from business organizations on this issue. Among the groups represented were retail merchants, independent businesses, automobile dealers, farm and power equipment dealers, convenience stores, petroleum marketers, restaurants, tire dealers, automotive wholesalers, and lumber and building material dealers. These groups pointed out that, unlike withholding payroll dollars, when a retailer collects and remits sales tax, it is handling the public's money as a service to the State. According to the groups who spoke to the Committee in 1988, some sort of discount is needed to help offset the significant costs to retailers of collecting and remitting the tax.

The 1987-88 Study Committee compared the treatment of sales tax discounts in other states and reviewed the cost of various discount rates and caps. The Committee concluded that a new discount would be desirable if it could be structured in such a way that the allowance to large merchants would be limited. An additional advantage of such a limitation is that it would be more reasonable in light of the State's budget needs, although one disadvantage is that it is more difficult for the Department of Revenue to administer. Finally, the Committee felt that the pressing needs of local government units in the State dictated that the local tax base not be eroded. After reviewing a number of options for allowing a discount against the State tax, the Committee recommended a merchant's discount that combined these considerations. The proposal was introduced in both the House of Representatives and the Senate in 1989 but did not pass.

The 1989-90 Revenue Laws Study Committee renewed its recommendation of the merchant's discount in a proposal that would have allowed a discount against State sales and use tax collections of three percent of the first \$1,000 of tax collected each month and one percent of the remaining tax collected each month, with a cap of \$100 per location each month and a cap of \$8,000 per retailer group each month. This proposal was not enacted by the 1991 General Assembly.

The 1991-92 Revenue Laws Study Committee has decided to recommend once again that the General Assembly enact a merchant's discount. Legislative Proposal 18, which is similar to earlier recommendations, would allow a discount against State sales and use tax collections of three percent of the first \$1,000 of tax collected each month and seven-tenths of one percent of the remaining tax collected each month. Seven-tenths of one percent is the same percentage the State retains from the local sales and use taxes to cover its costs of receiving and distributing the taxes for local governments.

The discount would be subject to a cap of \$100 per location each month and a cap of \$10,000 per retailer group each month. If a taxpayer files on a semimonthly basis, the retailer group maximum is calculated as \$5,000 each semimonthly period rather than \$10,000 each month. For the purpose of calculating the maximum, a retailer group includes (i) all corporate affiliates, parents, and subsidiaries that have 80% or more common stock ownership and/or (ii) all non-corporate businesses that are under the same general management, supervision, or ownership. The discount will not apply to local sales and use taxes.

The bill is to become effective April 1, 1994, and will apply to sales tax returns filed on or after that date.

**Proposal #18: Sales Tax Merchant's Discount**

**Summary:**

This proposal restores the merchant's discount for collecting sales tax that was repealed in 1987. The repeal was a revenue provision in a bill entitled the "School Facilities Finance Act".

The pre-1987 merchant's discount was a flat 3% rate. This proposal restores the discount at a graduated rate of 3% of the first \$1,000 of tax paid per month and 7/10 of one percent of any amount above \$1,000 per month. There are several maximum monthly discount provisions:

1. For each place of business at a separate location, \$100
2. For taxpayers who are required to report on a semimonthly basis, \$5,000 per semimonthly period for each retailer group
3. For taxpayers who report on a monthly basis, \$10,000 per month for each retailer group

**Effective Date:**

April 1, 1994

**Fiscal Effect:**

The Department of Revenue has estimated that this restoration will decrease General Fund revenues by \$20.7 million on a full fiscal year basis.

In FY1993-94, the discount will be in effect for only one quarter of the fiscal year. The revenue loss to the General Fund for that year would be approximately \$5 million.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 19 (93-LC-011(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
6-JAN-93

Short Title: Modify Tax Secrecy Provision.

(Public)

---

Sponsors: .

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX  
3 INFORMATION, TO MODIFY THE PROHIBITION TO PERMIT THE EXCHANGE  
4 OF CERTAIN INFORMATION BETWEEN DESIGNATED AGENCIES, AND TO  
5 EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FROM  
6 THE PROHIBITION.  
7 The General Assembly of North Carolina enacts:  
8 Section 1. G.S. 105-259 reads as rewritten:  
9 "§ 105-259. Secrecy required of officials; penalty for  
10 violation.  
11 ~~With respect to any one of the following persons: (i) the~~  
12 ~~Secretary of Revenue and all other officers or employees, and~~  
13 ~~former officers and employees, of the Department of Revenue; (ii)~~  
14 ~~local tax officials, as defined in G.S. 105-273, and former local~~  
15 ~~tax officials; (iii) members and former members of the Property~~  
16 ~~Tax Commission; (iv) any other person authorized in this section~~  
17 ~~to receive information concerning any item contained in any~~  
18 ~~report or return, or authorized to inspect any report or return;~~  
19 ~~and (v) the Commissioner of Insurance and all other officers or~~  
20 ~~employees and former officers and employees of the Department of~~  
21 ~~Insurance with respect to State and federal income tax returns~~  
22 ~~filed with the Commissioner of Insurance by domestic insurance~~  
23 ~~companies; and except in accordance with proper judicial order or~~

~~1 as otherwise provided by law, it shall be unlawful for any of  
2 these persons to divulge or make known in any manner the amount  
3 of income, income tax or other taxes of any taxpayer, or  
4 information relating thereto or from which the amount of income,  
5 income tax or other taxes or any part thereof might be  
6 determined, deduced or estimated, whether it is set forth or  
7 disclosed in or by means of any report or return required to be  
8 filed or furnished under this Subchapter, or in or by means of  
9 any audit, assessment, application, correspondence, schedule or  
10 other document relating to the taxpayer, notwithstanding the  
11 provisions of Chapter 132 of the General Statutes or of any other  
12 law or laws relating to public records. It shall likewise be  
13 unlawful to reveal whether or not any taxpayer has filed a  
14 return, and to abstract, compile or furnish to any person, firm  
15 or corporation not otherwise entitled to information relating to  
16 the amount of income, income tax or other taxes of a taxpayer,  
17 any list of names, addresses, social security numbers or other  
18 personal information concerning the taxpayer, whether or not the  
19 list discloses a taxpayer's income, income tax or other taxes, or  
20 any part thereof, except that when an election is made by a  
21 husband and wife under G.S. 105-152.1 to file a joint return, any  
22 information given to one spouse concerning the income or income  
23 tax of the other spouse reported or reportable on the joint  
24 return shall not be a violation of the provisions of this  
25 section.~~

~~26 Nothing in this section shall be construed to prohibit the  
27 publication of statistics, so classified as to prevent the  
28 identification of particular reports or returns, and the items  
29 thereof; the inspection of these reports or returns by the  
30 Governor, Attorney General, or their duly authorized  
31 representative; or the inspection by a legal representative of  
32 the State of the report or return of any taxpayer who shall bring  
33 an action to set aside or review the tax based thereon, or  
34 against whom an action or proceeding has been instituted to  
35 recover any tax or penalty imposed by this Subchapter; nor shall  
36 the provisions of this section prohibit the Department of Revenue  
37 furnishing information to other governmental agencies of persons  
38 and firms properly licensed under Schedule B, G.S. 105-33 to  
39 105-113. The Department of Revenue may exchange information with  
40 the officers of organized associations of taxpayers under  
41 Schedule B, G.S. 105-33 to 105-113, with respect to parties  
42 liable for these taxes and as to parties who have paid these  
43 license taxes.~~

~~1 When any record of the Department of Revenue has been  
2 photographed, photocopied, or microphotocopied pursuant to the  
3 authority contained in G.S. 8-45.3, the original of that record  
4 may thereafter be destroyed at any time upon the order of the  
5 Secretary of Revenue, notwithstanding the provisions of G.S.  
6 121-5, G.S. 132-2, or any other law relating to the preservation  
7 of public records. Any record that has not been so photographed,  
8 photocopied, or microphotocopied shall be preserved for three  
9 years, and thereafter until the Secretary of Revenue orders it  
10 destroyed.~~

~~11 Any person, officer, agent, clerk, employee, or local tax  
12 official or any former officer, employee, or local tax official  
13 who violates the provisions of this section shall be guilty of a  
14 misdemeanor and fined not less than two hundred dollars (\$200.00)  
15 nor more than one thousand dollars (\$1,000) and/or imprisoned, in  
16 the discretion of the court; and if the person committing the  
17 violation is a public officer or employee, that person shall be  
18 dismissed from such office or employment, and may not hold any  
19 public office or employment in this State for a period of five  
20 years thereafter.~~

~~21 Notwithstanding the provisions of this section, the Secretary  
22 of Revenue may permit the Commissioner of Internal Revenue of the  
23 United States, or the revenue officer of any other state imposing  
24 any of the taxes imposed in this Subchapter, or the duly  
25 authorized representative of either, to inspect the report or  
26 return of any taxpayer; or may furnish that person an abstract of  
27 the report or return of any taxpayer; or supply that person with  
28 information concerning any item contained in any report or  
29 return, or disclosed by the report of any investigation of any  
30 report or return of any taxpayer. The permission, however, may  
31 be granted or the information furnished to the officer or agent  
32 only if the statutes of the United States or of the other state  
33 grant substantially similar privilege to the Secretary of Revenue  
34 of this State or the Secretary's duly authorized representative.  
35 Notwithstanding any other provision of law, the Secretary may  
36 also furnish names, addresses, and account and identification  
37 numbers of (i) taxpayers who may be entitled to property held in  
38 the Escheat Fund to the Department of State Treasurer when that  
39 Department requests the information for the purpose of  
40 administering Chapter 116B of the General Statutes, and (ii)  
41 taxpayers to the Employment Security Commission when that  
42 Commission requests the information for the purpose of  
43 administering Article 2 of Chapter 96 of the General Statutes.  
44 Neither this section nor any other law prevents the exchange of~~

~~1 information between the Department of Revenue and the Department  
2 of Transportation's Division of Motor Vehicles when the  
3 information is needed by either to administer the laws with which  
4 they are charged. Notwithstanding any other provision of law,  
5 State officers and employees who perform computerized data  
6 processing functions pursuant to G.S. 143-341(9) for the  
7 Department of Revenue are authorized to receive and process for  
8 the Department of Revenue information in reports and returns and  
9 are subject to the criminal provisions of this section.~~

~~10 Notwithstanding the provisions of this section, the Secretary  
11 of Revenue may contract with any person, firm or corporation to  
12 receive and address, sort, bag, or deliver to the United States  
13 Postal Service any bulk mailing originated by the Department of  
14 Revenue, and may deliver the mail to the contractor pursuant to  
15 the contract. To ensure performance of the contract, the  
16 contractor shall furnish a bond in a form and amount acceptable  
17 to the Secretary.~~

~~18 Notwithstanding the provisions of this section, the Secretary  
19 of Revenue may contract with a financial institution for the  
20 receipt of withheld income tax payments under G.S. 105-163.6.~~

~~21 (a) Definitions. -- The following definitions apply in this  
22 section:~~

~~23 (1) Employee or officer. -- The term includes a former  
24 employee, a former officer, and a current or former  
25 member of a State board or commission.~~

~~26 (2) Tax information. -- Any information from any source  
27 concerning the liability of a taxpayer for a tax,  
28 as defined in G.S. 105-228.90. The term includes  
29 the following:~~

~~30 a. Information contained on a tax return, a tax  
31 report, or an application for a license for  
32 which a tax is imposed.~~

~~33 b. Information obtained through an audit of a  
34 taxpayer or by correspondence with a taxpayer.~~

~~35 c. Information on whether a taxpayer has filed a  
36 tax return or a tax report.~~

~~37 d. A list or other compilation of the names,  
38 addresses, social security numbers, or similar  
39 information concerning taxpayers.~~

~~40 The term does not include (i) statistics classified  
41 so that information about specific taxpayers cannot  
42 be identified or (ii) information submitted to the  
43 Business License Information Office of the~~

1                    Department of Secretary of State on a master  
2                    application form for various business licenses.

3 EXPLANATION: (CURRENT LAW - REVISED) THIS PROVISION DEFINES TAX  
4 INFORMATION, WHICH IS INFORMATION THAT MAY NOT BE DISCLOSED  
5 EXCEPT AS SPECIFICALLY PROVIDED BY LAW. THE CHANGE IN THE LAW IS  
6 THAT THE DEFINITION OF TAX INFORMATION WILL NOT INCLUDE  
7 INFORMATION SUBMITTED TO THE BUSINESS LICENSE INFORMATION OFFICE  
8 ON A MASTER APPLICATION FORM. THUS, THIS INFORMATION WOULD BE  
9 PUBLIC INFORMATION. THE INFORMATION ON THIS FORM NEEDS TO BE  
10 ACCESSIBLE TO THE VARIOUS AGENCIES THAT WILL SEE THE FORM TO  
11 PROCESS THE APPLICATIONS INCLUDED IN THE FORM. UNDER CURRENT  
12 LAW, THE TAX LICENSES ON THE MASTER FORM HAVE TO BE DISPLAYED AT  
13 THE TAXPAYER'S PLACE OF BUSINESS, SO THEY ARE ALREADY PUBLIC TO  
14 THAT EXTENT.

15

16        (b) Disclosure Prohibited. -- An officer, an employee, or an  
17 agent of the State who has access to tax information in the  
18 course of service to or employment by the State may not disclose  
19 the information to any other person unless the disclosure is made  
20 for one of the following purposes:

21 EXPLANATION: (CURRENT LAW - REVISED) THIS SUBSECTION CLARIFIES  
22 THE LAW AGAINST DISCLOSURE OF TAX INFORMATION AND THE VARIOUS  
23 EXCEPTIONS TO THAT LAW. THE RESTRICTIONS ON DISCLOSURE OF LOCAL  
24 GOVERNMENT TAX INFORMATION ARE DELETED FROM THIS STATUTE AND  
25 MOVED TO THE LOCAL GOVERNMENT TAX STATUTES IN SECTIONS 3 AND 4  
26 BELOW. EXCEPTIONS TO THE LAW AGAINST DISCLOSURE ARE LISTED  
27 SEPARATELY AND EXPLAINED BELOW.

28

29                    (1) To comply with a court order or a law.

30 EXPLANATION: (CURRENT LAW) THE CURRENT STATUTE STATES THAT TAX  
31 INFORMATION MAY BE DISCLOSED IN ACCORDANCE WITH A COURT ORDER OR  
32 AS OTHERWISE PROVIDED BY LAW.

33

34                    (2) To give a spouse who elects to file a joint tax  
35 return tax information concerning the other spouse,  
36 to the extent the information relates to the joint  
37 return.

38 EXPLANATION: (CURRENT LAW - REVISED) THE CURRENT STATUTE STATES  
39 THAT WHEN A MARRIED COUPLE HAS FILED A JOINT INCOME TAX RETURN,  
40 THE DEPARTMENT MAY PROVIDE TO EITHER SPOUSE INFORMATION ABOUT THE  
41 OTHER SPOUSE'S INCOME OR INCOME TAX RELATING TO THE JOINT RETURN.  
42 THIS PROVISION RESTATES THAT RULE AND EXTENDS IT TO APPLY TO  
43 OTHER JOINT TAX RETURNS (INTANGIBLES TAX), NOT JUST INCOME TAX  
44 RETURNS.

1  
2           (3) Review by the Attorney General or a representative  
3           of the Attorney General.

4 EXPLANATION: (CURRENT LAW - REVISED) THE CURRENT STATUTE  
5 AUTHORIZES THE GOVERNOR, THE ATTORNEY GENERAL, AND THEIR  
6 REPRESENTATIVES TO INSPECT TAX REPORTS AND RETURNS. THIS BILL  
7 RETAINS THE RIGHT OF THE ATTORNEY GENERAL TO INSPECT TAX RETURNS  
8 BUT ELIMINATES THE GOVERNOR'S RIGHT. THE STUDY COMMITTEE AND THE  
9 GOVERNOR'S OFFICE BOTH FOUND THAT ALLOWING THE GOVERNOR TO HAVE  
10 ACCESS TO TAX RETURNS SERVED NO KNOWN PURPOSE.

11  
12           (4) To provide a governmental agency or an officer of  
13           an organized association of taxpayers with a list  
14           of taxpayers who are liable for or have paid a  
15           privilege license tax under Article 2 of this  
16           Chapter.

17 EXPLANATION: (CURRENT LAW) THE CURRENT STATUTE ALREADY ALLOWS THE  
18 DEPARTMENT TO SHARE WITH OTHER GOVERNMENTAL AGENCIES AND WITH  
19 OFFICERS OF ORGANIZED TAXPAYERS' ASSOCIATIONS INFORMATION ON  
20 TAXPAYERS SUBJECT TO PRIVILEGE LICENSE TAXES.

21  
22           (5) Review by a tax official of another state or the  
23           United States to aid the state or the United States  
24           in collecting a tax imposed by this State, the  
25           other state, or the United States if the laws of  
26           the other state or the United States allow the  
27           state or the United States to provide similar tax  
28           information to a representative of this State.

29 EXPLANATION: (CURRENT LAW - REVISED) THE CURRENT STATUTE ALLOWS  
30 THE DEPARTMENT OF REVENUE TO SHARE TAX INFORMATION ON A  
31 RECIPROCAL BASIS WITH THE FEDERAL COMMISSIONER OF INTERNAL  
32 REVENUE AND THE REVENUE OFFICER OF ANOTHER STATE, OR WITH THE  
33 REPRESENTATIVE OF THE COMMISSIONER OR OTHER REVENUE OFFICIAL.

34  
35           (6) To receive, process, or deliver tax information on  
36           behalf of the Department of Revenue.

37 EXPLANATION: (CURRENT LAW) THE CURRENT STATUTE ALLOWS THE  
38 DEPARTMENT OF REVENUE TO (1) USE STATE DATA PROCESSORS TO PROCESS  
39 TAX INFORMATION AND (2) CONTRACT WITH A FIRM TO RECEIVE, PROCESS,  
40 AND DELIVER TO THE UNITED STATES POSTAL SERVICE BULK MAILINGS.

41  
42           (7) To furnish to the chair of a board of county  
43           commissioners information on the county sales and  
44           use tax.

1 EXPLANATION: (CURRENT LAW) THE ATTORNEY GENERAL HAS INTERPRETED  
2 THE CURRENT LAW TO ALLOW THE SECRETARY OF REVENUE TO SHARE LOCAL  
3 SALES TAX INFORMATION WITH THE CHAIR OF A BOARD OF COUNTY  
4 COMMISSIONERS BECAUSE THE SECRETARY IS ACTING AS THE COUNTY'S  
5 AGENT IN COLLECTING AND ADMINISTERING THE TAX. THIS SUBDIVISION  
6 WOULD MAKE THAT INTERPRETATION AN EXPLICIT PART OF THE STATUTE.

7

8       (8) To exchange information with the Division of Motor  
9       Vehicles of the Department of Transportation when  
10       the information is needed to fulfill a duty imposed  
11       on the Department of Revenue or the Division of  
12       Motor Vehicles.

13 EXPLANATION: (CURRENT LAW) THE CURRENT STATUTE ALLOWS THE  
14 EXCHANGE OF INFORMATION BETWEEN THESE TWO AGENCIES AS NECESSARY  
15 TO ADMINISTER THE LAWS.

16

17       (9) To furnish to the Department of State Treasurer,  
18       upon request, the name, address, and account and  
19       identification numbers of a taxpayer who may be  
20       entitled to property held in the Escheat Fund.

21 EXPLANATION: (CURRENT LAW) THE CURRENT STATUTE ALLOWS THE  
22 DEPARTMENT OF REVENUE TO PROVIDE THIS INFORMATION TO THE STATE  
23 TREASURER UPON REQUEST.

24

25       (10) To furnish to the Employment Security Commission  
26       the name, address, and account and identification  
27       numbers of a taxpayer when the information is  
28       requested by the Commission in order to fulfill a  
29       duty imposed under Article 2 of Chapter 96 of the  
30       General Statutes.

31 EXPLANATION: (CURRENT LAW) THE CURRENT STATUTE ALLOWS THE  
32 DEPARTMENT OF REVENUE TO PROVIDE THIS INFORMATION TO THE  
33 EMPLOYMENT SECURITY COMMISSION UPON REQUEST.

34

35       (11) To contract with a financial institution for the  
36       receipt of withheld income tax payments under G.S.  
37       105-163.6 or for the transmittal of payments by  
38       electronic funds transfer.

39 EXPLANATION: (CURRENT LAW - REVISED) THE CURRENT STATUTE ALLOWS  
40 THE DEPARTMENT OF REVENUE TO CONTRACT WITH A FINANCIAL  
41 INSTITUTION FOR THE RECEIPT OF WITHHELD INCOME TAX PAYMENTS.  
42 THIS PROVISION WOULD ALSO ALLOW THE DEPARTMENT OF REVENUE TO  
43 CONTRACT WITH A FINANCIAL INSTITUTION FOR TRANSMITTAL OF PAYMENTS  
44 BY ELECTRONIC FUNDS TRANSFER. IF THE GENERAL ASSEMBLY AUTHORIZES

1 AN ELECTRONIC FUNDS TRANSFER PROGRAM, THE SECRETARY WILL NEED TO  
2 BE ABLE TO CONTRACT WITH FINANCIAL INSTITUTIONS TO MAKE THE  
3 TRANSFERS.

4

5 (12) Review by the State Auditor to the extent  
6 authorized in G.S. 147-64.7.

7 EXPLANATION: (CURRENT LAW) THIS PROVISION PROVIDES A CROSS-  
8 REFERENCE TO THE EXISTING LAW THAT GRANTS THE STATE AUDITOR  
9 ACCESS TO TAX RECORDS FOR MATTERS OF OFFICIAL STATE BUSINESS.  
10 REQUESTED BY THE DEPARTMENT OF REVENUE.

11

12 (13) To furnish the Fiscal Research Division of the  
13 General Assembly upon request a sample of tax  
14 returns or other tax information from which  
15 taxpayers' names and identification numbers have  
16 been removed.

17 EXPLANATION: (CURRENT LAW - REVISED) G.S. 120-19 REQUIRES ALL  
18 STATE AGENCIES TO FURNISH THE GENERAL ASSEMBLY UPON REQUEST "ALL  
19 INFORMATION AND ALL DATA WITHIN THEIR POSSESSION." IT IS NOT  
20 CLEAR WHETHER G.S. 120-19, ENACTED IN 1937, WOULD OVERRIDE THE  
21 TAX SECRECY STATUTE, ENACTED IN 1939. THIS BILL ELIMINATES ANY  
22 RIGHT OF ACCESS THE GENERAL ASSEMBLY MAY HAVE TO CONFIDENTIAL TAX  
23 INFORMATION WITH AN EXCEPTION TO ALLOW THE GENERAL ASSEMBLY TO  
24 PERFORM FISCAL RESEARCH. THIS EXCEPTION PROVIDES THAT IF THE  
25 FISCAL RESEARCH DIVISION REQUESTS ACCESS TO A SAMPLE OF RETURNS,  
26 THE DEPARTMENT WILL BE REQUIRED TO SUPPLY COPIES OF THE RETURNS  
27 AFTER REMOVING TAXPAYERS' IDENTIFYING INFORMATION.

28

29 (14) To exchange information concerning a tax imposed by  
30 Subchapter V of this Chapter with the Standards  
31 Division of the Department of Agriculture when the  
32 information is needed to administer the Gasoline  
33 and Oil Inspection Act, Article 3 of Chapter 119 of  
34 the General Statutes.

35 EXPLANATION: (NEW) THE DEPARTMENT OF REVENUE AND THE DEPARTMENT  
36 OF AGRICULTURE WORK TOGETHER IN ADMINISTERING FUEL TAXES AND THE  
37 GASOLINE AND OIL INSPECTION ACT. GASOLINE AND OIL INSPECTION  
38 FEES ARE COLLECTED BY THE DEPARTMENT OF REVENUE. THIS PROVISION  
39 WOULD ALLOW THE TWO AGENCIES TO SHARE INFORMATION AS NEEDED.  
40 REQUESTED BY THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF  
41 AGRICULTURE.

42

43 (15) To exchange information concerning a tax imposed by  
44 Article 2A, 2B, 2C, or 2D of this Chapter with one



1 of the following agencies when the information is  
2 needed to fulfill a duty imposed on the agency:

- 3 a. The North Carolina Alcoholic Beverage Control  
4 Commission.  
5 b. The Division of Alcohol Law Enforcement of the  
6 Department of Crime Control and Public Safety.  
7 c. The Bureau of Alcohol, Tobacco, and Firearms  
8 of the United States Treasury Department.

9 EXPLANATION: (NEW) THIS PROVISION WOULD ALLOW THE DEPARTMENT OF  
10 REVENUE TO EXCHANGE WITH THESE THREE AGENCIES INFORMATION  
11 CONCERNING TAXES IMPOSED ON CIGARETTES AND TOBACCO PRODUCTS, SOFT  
12 DRINKS, ALCOHOLIC BEVERAGES, AND CONTROLLED SUBSTANCES. LAW  
13 ENFORCEMENT AGENCIES NEED TO WORK CLOSELY WITH TAX AGENCIES IN  
14 REGULATING AND TAXING THESE PRODUCTS. REQUESTED BY THE  
15 DEPARTMENT OF REVENUE AND THE THREE AGENCIES LISTED ABOVE.

16

- 17 (16) To furnish to the Department of Secretary of State  
18 the name, address, and account and identification  
19 numbers of a corporation liable for corporate  
20 income or franchise taxes to enable the Secretary  
21 of State to notify the corporation of the annual  
22 report filing requirement or that its articles of  
23 incorporation or its certificate of authority has  
24 been suspended.

25 EXPLANATION: (NEW) THIS PROVISION WOULD ALLOW THE DEPARTMENT OF  
26 REVENUE TO FURNISH THE SECRETARY OF STATE IDENTIFYING INFORMATION  
27 ON CORPORATE TAXPAYERS TO ENABLE THE SECRETARY OF STATE TO  
28 CONTACT THE CORPORATIONS. REQUESTED BY THE CORPORATIONS DIVISION  
29 OF THE DEPARTMENT OF SECRETARY OF STATE.

30

- 31 (17) To inform the Business License Information Office  
32 of the Department of Secretary of State of the  
33 status of an application for a license for which a  
34 tax is imposed and of any information needed to  
35 process the application.

36 EXPLANATION: (NEW) THIS PROVISION WOULD ALLOW THE DEPARTMENT OF  
37 REVENUE TO GIVE THE BUSINESS LICENSE INFORMATION OFFICE  
38 INFORMATION ON THE STATUS OF AN APPLICATION FOR A TAX LICENSE AND  
39 INFORMATION NEEDED TO PROCESS THE APPLICATION. THE BUSINESS  
40 LICENSE INFORMATION OFFICE IS CHARGED WITH IMPLEMENTING A MASTER  
41 APPLICATION FORM FOR VARIOUS LICENSES AND WITH HELPING CITIZENS  
42 OBTAIN THE NECESSARY LICENSES BEFORE ENGAGING IN BUSINESS. THE  
43 OFFICE IS UNABLE TO FULFILL ITS DUTY WITH REGARD TO MOST TAX  
44 LICENSES, HOWEVER, BECAUSE THE SECRECY LAW PREVENTS THE

1 DEPARTMENT OF REVENUE FROM GIVING THE OFFICE THE INFORMATION IT  
2 NEEDS TO PROVIDE ASSISTANCE TO CITIZENS. REQUESTED BY THE  
3 BUSINESS LICENSE INFORMATION OFFICE OF THE DEPARTMENT OF  
4 SECRETARY OF STATE.

5

6 (18) To furnish to the Office of the State Controller  
7 the name, address, and account and identification  
8 numbers of a taxpayer upon request to enable the  
9 State Controller to verify statewide vendor files  
10 or track debtors of the State.

11 EXPLANATION: (NEW) THE STATE CONTROLLER IS CHARGED WITH (1)  
12 MAINTAINING A FILE OF ALL VENDORS WITH WHOM STATE AGENCIES DO  
13 BUSINESS AND (2) LOCATING PERSONS WHO OWE MONEY, OTHER THAN TAX  
14 MONEY, TO THE STATE. THIS PROVISION WOULD ALLOW THE DEPARTMENT  
15 OF REVENUE TO FURNISH THE STATE CONTROLLER A TAXPAYER'S NAME,  
16 ADDRESS, AND ACCOUNT AND IDENTIFICATION NUMBERS UPON REQUEST FOR  
17 USE IN VERIFYING STATEWIDE VENDOR FILES OR TRACKING DEBTORS OF  
18 THE STATE. REQUESTED BY THE OFFICE OF THE STATE CONTROLLER.

19

20 (c) Punishment. -- A person who violates this section is guilty  
21 of a misdemeanor and may be fined not less than two hundred  
22 dollars (\$200.00) nor more than one thousand dollars (\$1,000),  
23 imprisoned for up to two years, or both. If the person  
24 committing the violation is an officer or employee, that person  
25 shall be dismissed from office or employment, and may not hold  
26 any public office or employment in this State for a period of  
27 five years thereafter."

28 EXPLANATION: (CURRENT LAW) THIS IS THE SAME PUNISHMENT THAT IS  
29 FOUND IN THE CURRENT STATUTE.

30

31 Sec. 2. G.S. 75-28 reads as rewritten:  
32 "§ 75-28. Unauthorized disclosure of tax information; violation a  
33 misdemeanor.

34 Except in accordance with proper judicial order, or as  
35 otherwise provided by law, it shall be unlawful for any person,  
36 firm or corporation employed or engaged to prepare, or who or  
37 which prepares or undertakes to prepare, for any other person or  
38 taxpayer any tax form, report or return, to disclose, divulge or  
39 make known in any manner or use for any purpose or in any manner  
40 other than in the preparation of such form, report or return,  
41 without the express consent of the taxpayer or person for whom  
42 the form or return is prepared, the name or address of the  
43 taxpayer or such other person, the amount of income, income tax  
44 or other taxes, or any other information shown on or included in

1 such form, report or return, or any information which may be or  
2 may have been furnished by the taxpayer or such other person to  
3 the preparer of such form, report or return or to the person,  
4 firm or corporation so employed or engaged.

5 ~~Nothing in this section shall be construed to amend or modify~~  
6 ~~the authority specified in G.S. 105-276(6) or any statute enacted~~  
7 ~~in substitution therefor.~~

8 Nothing in this section shall be construed to prohibit the  
9 ~~inspection of such forms, reports or returns required under~~  
10 ~~Subchapter I of Chapter 105 of the General Statutes in accordance~~  
11 ~~with the authority provided in G.S. 105-259, or the examination~~  
12 of any person, books, papers, records or other data in accordance  
13 with the authority provided in G.S. 105-258.

14 Any person, firm or corporation, or any officer, agent, clerk,  
15 employee, or former officer or employee, of any firm or  
16 corporation engaged or formerly engaged in the preparation of tax  
17 forms, reports or returns for others, whether acting for himself  
18 or as agent for such corporation, who or which shall violate the  
19 provisions of this section shall be guilty of a misdemeanor and  
20 shall be fined or imprisoned in the discretion of the court."

21 EXPLANATION: G.S. 75-28 IS A CONSUMER PROTECTION LAW THAT  
22 PROHIBITS TAX PREPARERS FROM DISCLOSING TAX INFORMATION. THE  
23 BILL WOULD REMOVE OBSOLETE AND REDUNDANT CROSS-REFERENCES AND  
24 LANGUAGE.

25

26 Sec. 3. Article 7 of Chapter 153A of the General  
27 Statutes is amended by adding a new section to read:

28 "§ 153A-148.1. Disclosure of certain information prohibited.

29 (a) Disclosure Prohibited. -- Notwithstanding Chapter 132 of  
30 the General Statutes or any other law regarding access to public  
31 records, local tax records that contain information about a  
32 taxpayer's income or receipts are not public records. A current  
33 or former officer, employee, or agent of a county who in the  
34 course of service to or employment by the county has access to  
35 information about the amount of a taxpayer's income or receipts  
36 may not disclose the information to any other person unless the  
37 disclosure is made for one of the following purposes:

- 38 (1) To comply with a court order or a law.  
39 (2) Review by the Attorney General or a representative  
40 of the Attorney General.  
41 (3) To receive, process, or deliver tax information on  
42 behalf of the county, as necessary to administer a  
43 tax.

1 (b) Penalty. -- Violation of this section is a misdemeanor  
2 punishable by a fine not to exceed one thousand dollars (\$1,000),  
3 imprisonment for up to two years, or both."

4 EXPLANATION: (CURRENT LAW - REVISED) THIS NEW SECTION, TO BE  
5 ADDED TO THE STATUTES RELATING TO COUNTIES' TAXING POWER,  
6 CONTAINS THE DISCLOSURE PROHIBITIONS THAT WERE PREVIOUSLY  
7 CONTAINED IN G.S. 105-259. THE PROHIBITIONS HAVE BEEN MODIFIED  
8 TO REMOVE INAPPROPRIATE RESTRICTIONS AND TO CHANGE THE PENALTY  
9 FOR DISCLOSURE OF TAX INFORMATION BY A COUNTY TAX OFFICIAL. THE  
10 CURRENT STATUTE IS OVERLY BROAD IN THAT IT DOES NOT RECOGNIZE  
11 THAT PROPERTY TAX RECORDS ARE AND NEED TO BE PUBLIC RECORDS.  
12 THIS REWRITE WOULD LIMIT THE PROHIBITION AGAINST DISCLOSURE OF  
13 COUNTY TAX INFORMATION TO APPLY ONLY TO INFORMATION ABOUT A  
14 TAXPAYER'S INCOME AND RECEIPTS. THIS REWRITE ALSO CHANGES THE  
15 PENALTY FOR UNLAWFUL DISCLOSURE OF COUNTY TAX INFORMATION.  
16 CURRENTLY, DISCLOSURE IS A MISDEMEANOR PUNISHABLE BY A FINE OR  
17 IMPRISONMENT OR BOTH AND, IF THE PERSON MAKING THE DISCLOSURE IS  
18 AN OFFICER OR EMPLOYEE, THAT PERSON MUST BE DISMISSED AND IS  
19 BARRED FROM HOLDING PUBLIC OFFICE OR EMPLOYMENT FOR FIVE YEARS.  
20 THE PROPOSED REWRITE RETAINS THE CRIMINAL PENALTY BUT REMOVES THE  
21 REQUIREMENT THAT THE PERSON BE DISMISSED AND BARRED FOR FIVE  
22 YEARS. THIS CHANGE IN THE PENALTY WAS REQUESTED BY  
23 REPRESENTATIVES OF LOCAL GOVERNMENTS.

24

25 Sec. 4 Article 9 of Chapter 160A of the General  
26 Statutes is amended by adding a new section to read:

27 "§ 160A-208.1. Disclosure of certain information prohibited.

28 (a) Disclosure Prohibited. -- Notwithstanding Chapter 132 of  
29 the General Statutes or any other law regarding access to public  
30 records, local tax records that contain information about a  
31 taxpayer's income or receipts are not public records. A current  
32 or former officer, employee, or agent of a city who in the course  
33 of service to or employment by the city has access to information  
34 about the amount of a taxpayer's income or receipts may not  
35 disclose the information to any other person unless the  
36 disclosure is made for one of the following purposes:

- 37 (1) To comply with a court order or a law.  
38 (2) Review by the Attorney General or a representative  
39 of the Attorney General.  
40 (3) To receive, process, or deliver tax information on  
41 behalf of the city, as necessary to administer a  
42 tax.

1 (b) Penalty. -- Violation of this section is a misdemeanor  
2 punishable by a fine not to exceed one thousand dollars (\$1,000),  
3 imprisonment for up to two years, or both."

4 EXPLANATION: (CURRENT LAW - REVISED) THIS NEW SECTION, TO BE  
5 ADDED TO THE STATUTES RELATING TO MUNICIPALITIES' TAXING POWER,  
6 CONTAINS THE DISCLOSURE PROHIBITIONS THAT WERE PREVIOUSLY  
7 CONTAINED IN G.S. 105-259. THE PROHIBITIONS HAVE BEEN MODIFIED  
8 TO REMOVE INAPPROPRIATE RESTRICTIONS AND TO CHANGE THE PENALTY  
9 FOR DISCLOSURE OF TAX INFORMATION BY A MUNICIPAL TAX OFFICIAL.  
10 THE CURRENT STATUTE IS OVERLY BROAD IN THAT IT DOES NOT RECOGNIZE  
11 THAT PROPERTY TAX RECORDS ARE AND NEED TO BE PUBLIC RECORDS.  
12 THIS REWRITE WOULD LIMIT THE PROHIBITION AGAINST DISCLOSURE OF  
13 MUNICIPAL TAX INFORMATION TO APPLY ONLY TO INFORMATION ABOUT A  
14 TAXPAYER'S INCOME AND RECEIPTS. THIS REWRITE ALSO CHANGES THE  
15 PENALTY FOR UNLAWFUL DISCLOSURE OF MUNICIPAL TAX INFORMATION.  
16 CURRENTLY, DISCLOSURE IS A MISDEMEANOR PUNISHABLE BY A FINE OR  
17 IMPRISONMENT OR BOTH AND, IF THE PERSON MAKING THE DISCLOSURE IS  
18 AN OFFICER OR EMPLOYEE, THAT PERSON MUST BE DISMISSED AND IS  
19 BARRED FROM HOLDING PUBLIC OFFICE OR EMPLOYMENT FOR FIVE YEARS.  
20 THE PROPOSED REWRITE RETAINS THE CRIMINAL PENALTY BUT REMOVES THE  
21 REQUIREMENT THAT THE PERSON BE DISMISSED AND BARRED FOR FIVE  
22 YEARS. THIS CHANGE IN THE PENALTY WAS REQUESTED BY  
23 REPRESENTATIVES OF LOCAL GOVERNMENTS.

24

25 Sec. 5. G.S. 105-289(e) reads as rewritten:

26 "(e) The Department of Revenue may furnish the following  
27 information to a local tax official:

- 28 (1) Information contained in a report to it or to any  
29 other State department; and  
30 (2) Information the Department has in its possession  
31 that may assist a local tax official in securing  
32 complete tax listings, appraising or assessing  
33 taxable property, collecting taxes, or presenting  
34 information in administrative or judicial  
35 proceedings involving the listing, appraisal, or  
36 assessment of property.

37 A local tax official may use information obtained from the  
38 Department under this subsection only for the purposes stated in  
39 subdivision (2). A local tax official may not divulge or make  
40 public this information except as required in administrative or  
41 judicial proceedings under this Subchapter. A local tax official  
42 who makes improper use of or discloses information obtained from  
43 the Department under this subsection is ~~punishable as provided in~~  
44 ~~G.S. 105-259~~ guilty of a misdemeanor and is punishable by a fine

1 not to exceed one thousand dollars (\$1,000), imprisonment for up  
2 to two years, or both.

3 The Department may not furnish information to a local tax  
4 official pursuant to this subsection unless it has obtained a  
5 written certification from the official stating that ~~he~~ the  
6 official is familiar with the provisions of ~~both~~ this subsection  
7 ~~and G.S. 105-259~~ and that information obtained from the  
8 Department under this subsection will be used only for the  
9 purposes stated in subdivision (2)."

10 EXPLANATION: LIKE THE PREVIOUS TWO SECTIONS, THIS SECTION CHANGES  
11 THE PENALTY FOR DISCLOSURE OF TAX INFORMATION BY A LOCAL TAX  
12 OFFICIAL. THE REWRITE DELETES THE CURRENT REQUIREMENT THAT A  
13 LOCAL TAX OFFICIAL OR EMPLOYEE WHO MAKES AN UNLAWFUL DISCLOSURE  
14 MUST BE DISMISSED AND MAY NOT HOLD PUBLIC OFFICE OR EMPLOYMENT  
15 FOR FIVE YEARS.

16

17 Sec. 6. G.S. 105-449.57 reads as rewritten:

18 "**§ 105-449.57. Cooperative agreements between states.**

19 The Secretary may enter into cooperative agreements with other  
20 states for exchange of information in administering the tax  
21 imposed by this Article. No agreement, arrangement, declaration,  
22 or amendment to an agreement is effective until stated in writing  
23 and approved by the Secretary.

24 An agreement may provide for determining the base state for  
25 motor carriers, records requirements, audit procedures, exchange  
26 of information, persons eligible for tax licensing, defining  
27 qualified motor vehicles, determining if bonding is required,  
28 specifying reporting requirements and periods, including defining  
29 uniform penalty and interest rates for late reporting,  
30 determining methods for collecting and forwarding of gasoline or  
31 other motor fuel taxes and penalties to another jurisdiction, and  
32 such other provisions as will facilitate the administration of  
33 the agreement.

34 ~~Notwithstanding the provisions of G.S. 105-259 to the contrary,~~  
35 In accordance with G.S. 105-259, the Secretary may, as required  
36 by the terms of an agreement, forward to officials of another  
37 state any information in the Department's possession relative to  
38 the use of gasoline or other motor fuels by any motor carrier.  
39 The Secretary may disclose to officials of another state the  
40 location of offices, motor vehicles, and other real and personal  
41 property of motor carriers.

42 An agreement may provide for each state to audit the records of  
43 motor carriers based in the state to determine if the gasoline or  
44 other motor fuel taxes due each state are properly reported and

1 paid. Each state shall forward the findings of the audits  
2 performed on motor carriers based in the state to each state in  
3 which the carrier has taxable use of gasoline or other motor  
4 fuels. For motor carriers not based in this State who have  
5 taxable use of gasoline or other motor fuels in this State, the  
6 Secretary may utilize the audit findings received from another  
7 state as the basis upon which to propose assessments of gasoline  
8 or other motor fuel taxes against the carrier as though the audit  
9 had been conducted by the Secretary. Penalties and interest  
10 shall be assessed at the rates provided in the agreement.

11 No agreement entered into pursuant to this section may preclude  
12 the Department from auditing the records of any motor carrier  
13 covered by this Chapter.

14 The provisions of Article 9 of this Chapter apply to any  
15 assessment or order made under this section.

16 The Secretary may not enter into any agreement that would  
17 increase or decrease taxes and fees imposed under Subchapter V of  
18 Chapter 105 of the General Statutes, and any provision to the  
19 contrary is void."

20 EXPLANATION: THIS PROVISION CORRECTS THE LANGUAGE OF A STATUTE  
21 REGARDING COOPERATIVE AGREEMENTS BETWEEN STATES TO MAKE IT  
22 CONSISTENT WITH THE SECRECY STATUTE AMENDED IN SECTION 1 OF THIS  
23 BILL.

24

25 Sec. 7. G.S. 120-19 reads as rewritten:

26 "§ 120-19. State officers, etc., upon request, to furnish data  
27 and information to legislative committees.

28 All Except as provided in G.S. 105-259, all officers, agents,  
29 agencies and departments of the State are required to give to any  
30 committee of the General Assembly, upon request, all information  
31 and all data within their possession, or ascertainable from their  
32 records. This requirement is mandatory and shall include  
33 requests made by any individual member of the General Assembly or  
34 ~~any one of its committees or chairmen thereof.~~ or the chair of a  
35 committee. "

36 EXPLANATION: (NEW) THIS PROVISION AMENDS THE STATUTE THAT  
37 REQUIRES STATE AGENCIES TO PROVIDE THE GENERAL ASSEMBLY ANY  
38 INFORMATION IT REQUESTS. AS AMENDED, THE STATUTE WILL NOT  
39 REQUIRE AGENCIES TO DISCLOSE CONFIDENTIAL TAX INFORMATION TO THE  
40 GENERAL ASSEMBLY EXCEPT AS SPECIFICALLY PROVIDED IN G.S. 105-259.

41

42 Sec. 8. G.S. 132-1.1 reads as rewritten:



1 "§ 132-1.1. Confidential communications by legal counsel to  
2 public board or agency; ~~not public records.~~ State tax  
3 information.

4 (a) Confidential Communications. -- Public records, as defined  
5 in G.S. 132-1, shall not include written communications (and  
6 copies thereof) to any public board, council, commission or other  
7 governmental body of the State or of any county, municipality or  
8 other political subdivision or unit of government, made within  
9 the scope of the attorney-client relationship by any  
10 attorney-at-law serving any such governmental body, concerning  
11 any claim against or on behalf of the governmental body or the  
12 governmental entity for which such body acts, or concerning the  
13 prosecution, defense, settlement or litigation of any judicial  
14 action, or any administrative or other type of proceeding to  
15 which the governmental body is a party or by which it is or may  
16 be directly affected. Such written communication and copies  
17 thereof shall not be open to public inspection, examination or  
18 copying unless specifically made public by the governmental body  
19 receiving such written communications; provided, however, that  
20 such written communications and copies thereof shall become  
21 public records as defined in G.S. 132-1 three years from the date  
22 such communication was received by such public board, council,  
23 commission or other governmental body.

24 (b) State Tax Information. -- Tax information may not be  
25 disclosed except as provided in G.S. 105-259, 153A-148.1, and  
26 160A-208.1. As used in this subsection, 'tax information' has  
27 the same meaning as in G.S. 105-259."

28 EXPLANATION: THIS PROVISION ADDS TO THE PUBLIC RECORDS LAW A  
29 CROSS REFERENCE TO THE STATUTES REGARDING DISCLOSURE OF STATE AND  
30 LOCAL TAX INFORMATION.

31

32 Sec. 9. G.S. 132-3 reads as rewritten:

33 "§ 132-3. Destruction of records regulated.

34 (a) Prohibition. -- No public official may destroy, sell,  
35 loan, or otherwise dispose of any public record, except in  
36 accordance with G.S. 121-5, without the consent of the Department  
37 of Cultural Resources. Whoever unlawfully removes a public record  
38 from the office where it is usually kept, or alters, defaces,  
39 mutilates or destroys it shall be guilty of a misdemeanor and  
40 upon conviction fined not less than ten dollars (\$10.00) nor more  
41 than five hundred dollars (\$500.00).

42 (b) Revenue Records. -- Notwithstanding subsection (a) and  
43 G.S. 121-5, when a record of the Department of Revenue has been  
44 photographed, photocopied, or microphotocopied, the original



1 record may be destroyed upon the order of the Secretary of  
2 Revenue. If a record of the Department of Revenue has not been  
3 photographed, photocopied, or microphotocopied, the original  
4 record shall be preserved for at least three years. After three  
5 years the original record may be destroyed upon the order of the  
6 Secretary of Revenue."

7 EXPLANATION: (CURRENT LAW) THE PUBLIC RECORDS LAW REGULATES WHEN  
8 PUBLIC RECORDS MAY BE DESTROYED. THIS SECTION MOVES FROM THE  
9 SECRECY STATUTE TO THE PUBLIC RECORDS LAW THE CURRENT RULES  
10 REGULATING DESTRUCTION OF RECORDS BY THE DEPARTMENT OF REVENUE.

11

12           Sec. 10. This act is effective upon ratification.



### Explanation of Proposal 19

This proposal stems from a need of the Business License Information Office of the Department of Secretary of State to obtain information from the Department of Revenue on the status of a taxpayer's application for various privilege licenses for which taxes are imposed under Chapter 105 of the General Statutes. The Business License Information Office is charged with implementing a master application form for various licenses and with helping citizens obtain the necessary privilege licenses before engaging in business. That Office cannot fulfill its duty under current law, however, because G.S. 105-259, the "tax secrecy provision," prohibits the disclosure of information on the status of an application for a privilege license. Consequently, the Business License Information Office cannot provide a citizen much help in obtaining the required licenses.

In reviewing G.S. 105-259 to make the changes needed to accommodate the Business License Information Office, the 1989-90 Revenue Laws Study Committee decided to rewrite the statute to make it understandable. The Committee found the current statute long, poorly organized, and confusing. In rewriting the statute, the 1989-90 Committee expanded the scope of information that can be exchanged by creating an exception for certain information furnished to the Business License Information Office and by allowing the exchange of information with certain designated agencies.

The proposal was introduced in the 1991 Session of the General Assembly but was not enacted. The 1991-92 Revenue Laws Study Committee decided to recommend the proposal again after determining that a number of changes to the tax secrecy statute are needed. The Committee found that one of the problems in considering the bill was the difficulty of discerning which parts of the rewrite make substantive changes and which parts merely restate existing law in clearer language. The Committee asked the staff to set out explanatory notes in the body of the bill to make it easier to understand. The draft of Legislative Proposal 19 contains these explanations.

Legislative Proposal 19 makes a number of substantive changes to the existing law, some of which were part of the 1989-90 Committee's proposal and some of which are new. It removes the authority of the Governor to have access to confidential tax

information. After consulting with the Governor's office, the Committee determined that that provision served no known purpose.

The bill also clarifies that the General Assembly may not have access to confidential tax information, but provides that the Department of Revenue must furnish the Fiscal Research Division of the General Assembly upon request a sample of tax returns from which taxpayers' identifying information has been removed. The Fiscal Research Division had requested this provision in anticipation of a potential problem if the General Assembly needed a fiscal estimate derived from tax return data and the Department of Revenue was either unwilling or unable to comply. Both the Fiscal Research Division and the Department of Revenue agreed that such a problem had not arisen to date because of the cordial relationship of cooperation between the Department of Revenue and the General Assembly. However, the Fiscal Research Division pointed out that this could change under a different Secretary of Revenue. The Department of Revenue opposed this provision on the grounds that it is unnecessary, would be difficult to implement, and might cause the Internal Revenue Service to stop sharing federal income tax data with the State. The Secretary of Revenue's arguments are set out in a letter that is Appendix K of this report.

The Revenue Laws Study Committee weighed these considerations and discussed tightening up the provision by requiring a subpoena for access to the returns or by specifying that the Fiscal Research Division could request the returns only for official research purposes. The Committee decided to recommend that bill as written but to request the Secretary of Revenue to contact the Internal Revenue Service to find out whether it would discontinue sharing federal tax data with the State if the provision, or a limited version of it, were enacted. The Committee anticipated that the Finance Committees of the House and Senate could decide what action to take on this provision after the Internal Revenue Service provided more information.

Under the proposal, the Department of Revenue will be able to share certain tax information with several agencies with which it cannot now share information. First, the proposal allows the Department to exchange tax information with any federal agency charged with collecting a tax. Under current law, information can only be exchanged with the Internal Revenue Service. Second, the proposal allows the Department to exchange information on license and excise taxes with the North Carolina Alcoholic Beverage Control Commission, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, and the federal Bureau of Alcohol, Tobacco, and Firearms. Under current law, the Department of Revenue

cannot exchange information, other than lists of licensees, with these agencies. These law enforcement agencies work closely with tax agencies in regulating the products subject to excise taxes. Third, the proposal allows the Department to share motor fuel tax information with the Department of Agriculture; the two agencies work together in administering motor fuel taxes and the Gasoline and Oil Inspection Act. Finally, the proposal allows the Department to furnish the Secretary of State and the State Controller names and identifying information of taxpayers to enable the Secretary of State to locate corporations and to enable the State Controller to locate vendors who do business with the State and debtors of the State.

The proposal excludes information submitted to the Business License Information Office on a master application form from the definition of tax information. This change makes the information submitted on a master application form accessible to the various agencies that need to see the form to be able to process the applications included on the form and makes the information available to the public. Under current law, all the tax licenses included on the master application form must be displayed at a place of business and are, to that extent, already available to the public.

Legislative Proposal 19 modifies the tax secrecy provisions that apply to local governments. Under current law, G.S. 105-259 applies to tax information in the possession of local governments. Property tax records are and need to be public records; to the extent the current law applies to property tax records, it is overly broad and has not been enforced. The bill solves this problem by removing the provisions relating to local tax information from the State tax statute and placing them in the statutes relating to counties' and municipalities' taxing power. The new provisions, set out in Sections 3 and 4 of the bill, clarify that only information relating to a taxpayer's income or receipts must be kept confidential. The new provisions also eliminate part of the current penalty for disclosure of confidential local tax information, as requested by representatives of local governments. Under current law, disclosure is a misdemeanor punishable by fine or imprisonment, and the person making the disclosure must be dismissed from public office or employment and may not hold public office or employment for five years. Sections 3 and 4 of the draft eliminate the latter part of the punishment, so that a local government official or employee who makes an unlawful disclosure will no longer be dismissed automatically and barred for five years.

In addition to making the described modifications to G.S. 105-259, the proposal makes conforming changes to various statutes. It also moves provisions that are

unrelated to the disclosure of tax information from G.S. 105-259 to more appropriate statutes. The bill becomes effective upon ratification.

**Proposal #19: Modify Tax Secrecy Provision**

Explanation:

This proposal makes a number of substantive changes to the existing tax secrecy statute. These changes include:

1. The removal of the authority of the Governor to have access to confidential tax information.
2. Requires the Department of Revenue to furnish the Fiscal Research Division upon request a sample of tax returns from which taxpayers' identifying information has been removed.
3. The exclusion of information submitted to the Business License Information Office on a master application from the definition of tax information.
4. Modifies the tax secrecy provisions that apply to local governments by moving them out of the State tax statute and into statutes relating to local governments' taxing power.

Effective Date:

Upon ratification

Fiscal Effect:

None





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

Proposal 20 (93-LC-017A(1.1))  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Regulate Property Tax Representatives. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE PROPERTY TAX REPRESENTATIVES AND CONSULTANTS.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. G.S. 105-273 is amended by adding a new  
5 subdivision to read:  
6 "(12a) 'Registered property tax consultant' means a person  
7 registered under G.S. 105-293.1."  
8 Sec. 2. G.S. 105-289 is amended by adding a new  
9 subsection to read:  
10 "(j) To maintain a list of registered property tax consultants  
11 and to administer the registration, examination, and continuing  
12 education of registered property tax consultants as provided in  
13 G.S. 105-293.1."  
14 Sec. 3. Article 15 of Chapter 105 of the General  
15 Statutes is amended by adding at the end a new section to read:  
16 "§ 105-293.1. Registration of property tax consultants.  
17 (a) Who May Represent Property Owner.  
18 (1) Preparing Abstracts. -- Only the following persons  
19 may assist a property owner in preparing a tax list  
20 or abstract for compensation:  
21 a. A person licensed to practice law in this  
22 State.  
23 b. A certified public accountant licensed to  
24 practice in this State.

- 1                    c. A registered property tax consultant.
- 2            (2) Appeals. -- Only the following persons may
- 3            represent a property owner in the appeal of a
- 4            listing or an appraisal before the county or before
- 5            the Property Tax Commission for compensation:
- 6                    a. A person licensed to practice law in this
- 7                    State.
- 8                    b. A fulltime employee of the property owner.
- 9                    c. A registered property tax consultant.
- 10           (3) Practice of Law. -- This section does not authorize
- 11           a person to engage in the practice of law without
- 12           being licensed to practice law in this State.
- 13           (b) Eligibility for Registration. -- To be eligible for
- 14 registration as a registered property tax consultant, a person
- 15 must:
- 16            (1) Be at least 21 years old.
- 17            (2) Hold a high school diploma or an equivalent
- 18            credential.
- 19            (3) Establish a place of business in this State or
- 20            designate an agent for service of process who is a
- 21            resident of this State.
- 22            (4) Have completed at least 75 tested hours of
- 23            educational courses approved by the Department.
- 24            (5) Pass the examination required under this section
- 25            for registration as a registered property tax
- 26            consultant or have a current professional
- 27            designation in property taxation granted by the
- 28            International Association of Assessing Officers,
- 29            the Institute of Property Taxation, the Appraisal
- 30            Institute, or a similar organization approved by
- 31            the Department whose membership is composed
- 32            substantially of persons who participate in
- 33            property tax and transactional tax matters. The
- 34            Department may grant an applicant for registration
- 35            additional credits, as determined by the
- 36            Department, for other educational programs or
- 37            courses completed by an applicant or for an
- 38            applicant's advanced or post-graduate educational
- 39            achievement, professional licenses, or professional
- 40            designations from recognized institutions,
- 41            organizations, or associations, if the courses,
- 42            education, licenses, or designations relate to the
- 43            property tax field.

1 (c) Examination. -- The Department of Revenue shall adopt an  
2 examination for the registration of property tax consultants.  
3 The examination must test the applicant's knowledge of property  
4 taxation, the property tax system, property tax administration,  
5 ethical standards, and the general principles of appraisal,  
6 accounting, and law as they relate to property tax listing and  
7 appraisal. The Department shall establish the standards for  
8 passing the examination and shall conduct the examination at  
9 times and places designated by the Department.

10 (d) Application. -- To become registered, a person must file  
11 with the Department a completed application in the form required  
12 by the Department. Within thirty days after receiving a properly  
13 completed application, the Department shall take one of the  
14 following actions:

- 15         (1) Approve the application and advise the applicant  
16             that he or she is eligible to take the examination  
17             for registration of property tax consultants.  
18         (2) Approve the application and advise the applicant  
19             that no examination will be required because the  
20             applicant holds a current qualifying designation.  
21         (3) Disapprove the application, advising the applicant  
22             that he or she is not eligible to take the  
23             examination for registration and stating the reason  
24             for the disapproval.

25 (e) Registration. -- A person who has met the application  
26 requirements of this section and has either passed the  
27 registration examination or been advised by the Department that  
28 no examination will be required, is eligible for registration as  
29 a registered property tax consultant. The Department shall issue  
30 to each eligible person a certificate of registration that is  
31 valid for two years.

32 (f) Renewal of Registration. -- During each two-year  
33 registration period, each registered property tax consultant  
34 shall complete a minimum of 20 hours of continuing education  
35 courses, recognized by the Department, as a prerequisite to  
36 renewal of registration. Before the registration period expires,  
37 the registered property tax consultant must apply to renew his or  
38 her registration for another two-year period, and must furnish  
39 evidence of compliance with the continuing education requirement.  
40 The Department shall renew the registration of a registered  
41 property tax consultant who has complied with this subsection and  
42 continues to meet the eligibility requirements for registration."

43         Sec. 4. G.S. 105-322(g)(2) is amended by adding a  
44 subsection e. as follows:

1           "e. A registered property tax consultant may  
2           represent a property owner in the appeal of  
3           listing and appraisals before a county  
4           assessor or a county board of equalization and  
5           review only if the consultant first submits  
6           proof that the property owner has authorized  
7           the appeal and that the consultant is  
8           registered under G.S. 105-293.1."

9           Sec. 5. G.S. 105-290(f) reads as rewritten:

10          "(f) Notice of Appeal. -- A notice of appeal filed with the  
11 Property Tax Commission shall be in writing and shall state the  
12 grounds for the appeal. The notice shall be signed by the  
13 property owner or the person representing the property owner. A  
14 notice filed by a registered property tax consultant must be  
15 accompanied by proof that the consultant is registered pursuant  
16 to G.S. 105-293.1 and is authorized by the property owner to file  
17 the appeal. A ~~The property owner who files a notice of appeal or~~  
18 the ~~property owner's representative shall send file~~ a copy of the  
19 notice ~~to~~ of appeal with the appropriate county assessor."

20          Sec. 6. G.S. 105-310 reads as rewritten:

21          "§ 105-310. Affirmation; penalty for false affirmation.

22          (a) Taxpayer or Taxpayer's Agent. -- There shall be annexed to  
23 the abstract on which the taxpayer's property is listed the  
24 following affirmation, which shall be signed by an individual  
25 qualified under the provisions of G.S. 105-311:

26                   Under penalties prescribed by law, I hereby affirm  
27                   that to the best of my knowledge and belief this  
28                   listing, including any accompanying statements,  
29                   inventories, schedules, and other information, is  
30                   true and complete. (If this affirmation is signed  
31                   by an individual other than the taxpayer, ~~he~~ the  
32                   signer affirms that he is familiar with the extent  
33                   and true value of all the taxpayer's property  
34                   subject to taxation in this county and that ~~his~~ the  
35                   affirmation is based on all the information of  
36                   which ~~he~~ the signer has any knowledge.)

37          (b) Person Assisting Taxpayer. -- In addition to the  
38 affirmation required by subsection (a), any person who assists  
39 the taxpayer in completing the abstract shall sign the  
40 affirmation set out above and shall indicate the capacity in  
41 which the person assisted the taxpayer. A registered property  
42 tax consultant who signs the affirmation shall note his or her  
43 registration number.

1 (c) Penalty. -- Any individual who willfully makes and  
2 subscribes an abstract listing required by this Subchapter which  
3 he does not believe to be true and correct as to every material  
4 matter shall be guilty of a misdemeanor and, upon conviction,  
5 shall be subject to a fine not to exceed five hundred dollars  
6 (\$500.00) or imprisonment not to exceed six months."

7 Sec. 7. G.S. 105-309(g) is amended by adding a new  
8 subsection to read:

9 "(g) The abstract shall contain the following statement: 'The  
10 following persons, and no others, are permitted to assist  
11 taxpayers in the preparation of this abstract: (1) attorneys at  
12 law and certified public accountants licensed to practice in the  
13 State of North Carolina, and (2) registered property tax  
14 consultants registered pursuant to G.S. 105-293.1. A person who  
15 assists in the preparation of this abstract shall sign as a  
16 preparer in the space provided, and shall indicate the person's  
17 identification number issued by the North Carolina State Bar,  
18 certificate number issued by the N. C. State Board of C.P.A.  
19 Examiners, or registration number issued by the Department of  
20 Revenue.'"

21 Sec. 8. This act becomes effective July 1, 1993.



### Explanation of Proposal 20

Legislative Proposal 20 is a working draft of a proposal of the Association of County Commissioners to require licensing of parties who represent taxpayers in property tax matters. The proposal is designed to regulate and monitor the increasing number of property tax representatives who bring property tax appeals on behalf of large numbers of taxpayers. The licensing and examination would be performed by the Department of Revenue.

Because the bill sets up what is in essence an occupational licensing board for an occupation that is not currently required to be licensed, it will need to be referred to the Legislative Committee on New Licensing Boards as soon as that committee is appointed by the 1993 General Assembly. The draft will also need to be refined, based upon input by the Association of County Commissioners. For example, a criminal penalty for practicing the occupation without a license would probably need to be added to the bill, as would an application fee to be paid to the Department of Revenue. The bill would become effective July 1, 1993.





Proposal #20: License Property Tax Appeal Representatives

Summary:

This proposal requires the Department of Revenue to license all parties who represent taxpayers in property tax matters. The licensees shall be designated as "registered property tax consultants".

Effective Date:

July 1, 1993

Fiscal Effect:

To date, Fiscal Research has not been successful in determining how many property tax consultants are currently operating in North Carolina.

However, since there is no fee required at the time of initial registration or renewal, the fiscal impact will occur exclusively on the expenditure side. Under this proposal, the Department of Revenue is given the added responsibilities of:

1. Approval of applications to become registered property tax consultants,
2. Development and maintenance of a registrant database,
3. Development and administration of new registrant examinations, and
4. Renewal of registrant certification at two-year intervals.

Additional expenditures of personnel time, computer charges, and printing and storage costs will be necessary. The Department has two options: 1) to absorb the additional cost into its continuation budget, or 2) to request additional General Fund appropriations through the expansion budget process.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

Proposal 21 (93-LCX-022)  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Property Tax Appeals Filing Fee. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE A FILING FEE ON APPEALS TO THE PROPERTY TAX  
3 COMMISSION.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 105-290 is amended by adding a new  
6 subdivision to read:  
7 "(h) Filing Fee. -- A filing fee is required from each  
8 appellant who files an appeal under subsection (b) concerning the  
9 listing, appraisal, or assessment of property. Fees collected  
10 under this subsection are departmental receipts and shall be  
11 applied to the operating costs of the Property Tax Commission.  
12 The appellant may submit the filing fee together with the notice  
13 of appeal, but must submit the filing fee not later than thirty  
14 days after the Commission acknowledges receipt of the notice of  
15 appeal. The Commission shall dismiss an appeal if the filing fee  
16 is not paid by the due date. The fee is imposed for each  
17 property that is the subject of an appeal, based on the county's  
18 appraised value of the property, as follows:

19	<u>Appraised Value</u>	<u>Fee</u>
20	<u>Less than \$200,000</u>	<u>\$25.00</u>
21	<u>At least \$200,000,</u>	
22	<u>but less than \$500,000</u>	<u>50.00</u>
23	<u>\$500,000 or more</u>	<u>75.00"</u>

1           Sec. 2. This act becomes effective July 1, 1993, and  
2 applies to appeals filed on or after that date.

## Explanation of Proposal 21

Legislative Proposal 21 imposes a filing fee on persons who file property tax appeals to the Property Tax Commission concerning the listing, appraisal, or assessment of property. The Property Tax Commission is a five-member State board of equalization and review that decides administrative appeals by taxpayers concerning their local property taxes. Under current law, there is no fee for filing an appeal to the Property Tax Commission.

The bill sets out a schedule of fees based upon the appraised value of the property that is the subject of the appeal. The fee is \$25 for property appraised at less than \$200,000, \$50 for property appraised at between \$200,000 and \$500,000, and \$75 for property appraised at \$500,000 or more. The fees would apply to appeals filed on or after July 1, 1993.

The Property Tax Commission requested this legislation based, in part, on the rapidly growing number of appeals it decides each year. The Property Tax Commission reported that the highest number of appeals filed in a year before 1992 was about 580. From January through October 15, 1992, however, approximately 960 appeals had already been filed.

The fees collected by the Property Tax Commission would be departmental receipts, which would go to support the work of the Commission. The cost of the Property Tax Commission's budget is appropriated from the General Fund, but the General Fund is reimbursed for this cost from intangibles tax revenue that would otherwise be distributed to local governments. Thus, the use of these fees to support the Property Tax Commission's budget will reduce the amount of funds the State draws from local governments' intangibles tax sharing distribution.



Proposal #21: Property Tax Appeal Filing Fee

Summary:

This proposal levies a filing fee for property tax appeals to the Property Tax Commission.

Effective Date:

July 1, 1993

Fiscal Effect:

The proposed filing fee schedule for appeals to the Property Tax Commission is as follows:

<u>Property Value</u>	<u>Fee</u>
Property appraised at less than \$200,000	\$25
Property appraised at \$200,000 or more, but less than \$500,000	\$50
Property appraised at \$500,000 or more	\$75

In calendar year 1992, approximately 1,000 appeals have been filed with the Property Tax Commission. Assuming that the majority of appeals will involve property appraised at \$200,000 or less, revenues generated by the levy of this fee are estimated at \$30,000. Receipts from this fee will become departmental receipts of the Property Tax Commission, and they are intended to supplement the Commission's current continuation budget.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S OR H

D

Proposal 22 (93-LC-027(1.1))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Nontaxpaid fuel criminal penalty. (Public)

---

Sponsors: .

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT DELIVERY OF NONTAXPAID SPECIAL FUEL INTO THE  
3 SUPPLY TANK OF A MOTOR VEHICLE AND ACQUISITION OF NONTAXPAID  
4 SPECIAL FUEL FOR USE IN A MOTOR VEHICLE.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 105-449.34 reads as rewritten:  
7 "§ 105-449.34. Acts and omissions declared to be ~~misdemeanors;~~  
8 penalties. misdemeanors.  
9 A person who commits one or more of the following acts is  
10 guilty of a misdemeanor:  
11 (1) Fails to obtain a license required by this Article.  
12 (2) Willfully fails to make a report required by this  
13 Article.  
14 (3) Willfully fails to pay a tax when due under this  
15 Article.  
16 (4) Makes a false statement in an application, a  
17 report, or a statement required under this Article.  
18 (5) Fails to keep records as required under this  
19 Article.  
20 (6) Refuses to allow the Secretary of ~~Revenue~~ or a  
21 representative of the Secretary of ~~Revenue~~ to  
22 examine the licensee's books and records concerning  
23 fuel.

- 1           (7) Fails to disclose the correct amount of fuel sold  
2           or used in this State.  
3           (8) Fails to file an additional bond as required under  
4           this Article.  
5           (9) Dispenses nontaxpaid fuel into the supply tank of a  
6           motor vehicle, knowing the fuel to be nontaxpaid.  
7           (10) Allows nontaxpaid fuel to be dispensed into the  
8           supply tank of a motor vehicle, knowing the fuel to  
9           be nontaxpaid."  
10           Sec. 2. This act becomes effective October 1, 1993, and  
11 applies to offenses committed on or after that date.

## Explanation of Proposal 22

This proposal creates two related misdemeanor offenses involving the purchase of nontaxpaid special fuel. Special fuel is diesel fuel and other kinds of motor fuel except gasoline. Nontaxpaid special fuel is special fuel on which the per gallon excise tax has not been paid. The offenses are knowingly dispensing nontaxpaid special fuel into a motor vehicle and knowingly allowing someone to dispense nontaxpaid special fuel into a motor vehicle. The proposal becomes effective October 1, 1993, and applies to offenses committed on or after that date.

The misdemeanor offenses in the proposal are punishable by imprisonment for up to two years, a fine of any amount, or both fine and imprisonment as determined by the court. Although this proposal does not set out the punishment, this proposal is subject to G.S. 14-3(a). That statute sets out the punishment that applies to a misdemeanor offense when no specific punishment is otherwise prescribed.

The offenses were recommended to the Revenue Laws Study Committee by the Department of Revenue. That Department conducted a "sting" operation in which many retail service stations were caught allowing customers to dispense diesel fuel into motor vehicles from pumps marked "Nonhighway Use Only." In attempting to prosecute those caught, the Department discovered that although those caught could be assessed a civil penalty under G.S. 105-449.24 or be charged with felony tax evasion, they could not be charged with any misdemeanor offenses. The Department felt that the civil penalty alone was not a sufficient deterrent and that the chance of obtaining felony convictions in these circumstances was unlikely. The Department therefore turned to the Committee for help in establishing appropriate misdemeanor offenses.

The Committee agreed that the type of behavior discovered in the sting operation should be a misdemeanor and adopted this proposal. The proposal is designed to address the problem of persons buying special fuel from service station pumps marked "Nonhighway Use Only," either with or without the complicity of the service station attendant. Proposed G.S. 105-449.34(9) focuses on the person who dispenses the fuel and proposed G.S. 105-449.34(10) focuses on the service station attendant or other person who allows the unauthorized sale to occur.

The offenses apply only to special fuel rather than to both special fuel and gasoline because of the difference in the payment of taxes on special fuel and gasoline.

The per gallon excise tax on special fuel applies to the first sale of the fuel for a highway use; the per gallon excise tax on gasoline applies to the first sale of the gasoline in this State.

This difference in the application of the per gallon excise tax reflects the difference in the uses of these fuels. Over half of special fuel sold in this State is used for a purpose other than to propel a motor vehicle, but almost all gasoline sold is used to propel a motor vehicle. The result of these differences is that a lot of special fuel is sold without the per gallon excise tax being collected on the sale. The availability of this nontaxpaid special fuel creates opportunities for tax evasion, a prime example of which is the purchase of nontaxpaid special fuel from nonhighway pumps at service stations.

In addition to creating two misdemeanor offenses, the proposal makes two technical changes. First, it deletes the word "penalties" in the catchline to G.S. 105-449.34 because the statute contains no penalties other than misdemeanors. Second, it deletes the words "of Revenue" following "Secretary" in two places to apply the definition of Secretary in G.S. 105-449.2. That definition was added in 1991 and a conforming change was not made to this statute.

Proposal #22: Nontaxpaid Fuel Criminal Penalty

Explanation:

This proposal establishes a new criminal penalty for participation in various diesel fuel tax evasion schemes:

1. dispensing nontaxpaid fuel into the supply tank of a motor vehicle knowing the fuel to be nontaxpaid, and
2. allowing nontaxpaid fuel to be dispensed into the supply tank of a motor vehicle knowing the fuel to be nontaxpaid.

Effective Date:

October 1, 1993, and applying to offenses committed on or after that date.

Fiscal Effect:

The purpose of imposing a criminal penalty for dispensing or allowing someone to dispense nontaxpaid diesel fuel into a motor vehicle is not revenue generation. The purpose is to increase the number of options available to the Attorney General with which to prosecute fuel tax evaders.

Under current law, the only avenue of prosecution available is felony tax evasion. These are difficult and time-consuming cases, and the results are not cost-effective in cases involving small amounts of money.

These criminal sanctions are most likely to be used during future "sting" operations conducted by the Department of Revenue and the Division of Motor Vehicles. When these operations occur, there will likely be some small increase in Highway Fund and Highway Trust Fund revenues.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

Proposal 23 (93-LJX-2(1.3))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Dealer Plate/License Changes.

(Public)

---

Sponsors: .

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE REQUIREMENTS FOR LICENSURE AS A MOTOR  
3 VEHICLE WHOLESALER OR DEALER, TO LIMIT THE NUMBER OF MOTOR  
4 VEHICLE DEALER LICENSE PLATES THAT CAN BE ISSUED TO THE SAME  
5 DEALER, TO EXPAND THE USE OF TRANSPORTER PLATES, AND TO CHANGE  
6 THE FEE FOR TRANSPORTER PLATES.  
7 The General Assembly of North Carolina enacts:  
8       Section 1. G.S. 20-286(5a) and (6) read as rewritten:  
9       "(5a) Established office. -- An office that meets the  
10       following requirements:  
11       a. Contains at least ~~96~~ 250 square feet of floor  
12       space in a permanent enclosed ~~building.~~  
13       building that is not a residence.  
14       b. Is a place where the books, records, and files  
15       required by the Division under this Article  
16       are kept.  
17       c. Is contiguous to an enclosed or open area that  
18       is owned or leased by the person who operates  
19       the office and that is large enough for the  
20       display of at least 10 motor vehicles.  
21       (6) Established salesroom. -- A salesroom that meets  
22       the following requirements:

- 1 a. Contains at least ~~96~~ 250 square feet of floor  
2 space in a permanent enclosed ~~building.~~  
3 building that is not a residence.
- 4 b. Displays, or is located immediately adjacent  
5 to, a sign having block letters not less than  
6 ~~three~~ six inches in height on contrasting  
7 background, clearly and distinctly designating  
8 the trade name of the business.
- 9 c. Is a place ~~at which~~ where a permanent business  
10 of bartering, trading, and selling motor  
11 vehicles will be carried on in good faith on  
12 an ongoing basis whereby the dealer can be  
13 contacted by the public at reasonable times.
- 14 d. Is a place where the books, records, and files  
15 required by the Division under this Article  
16 are kept.
- 17 e. Is a place where at least 10 motor vehicles  
18 can be displayed.

19 The term includes the area contiguous to or  
20 located within 500 feet of the premises on which  
21 the salesroom is located. The term does not  
22 include a tent, a temporary stand, or other  
23 temporary quarters. ~~The minimum area requirement~~  
24 ~~does not apply to any place of business lawfully~~  
25 ~~in existence and duly licensed on or before~~  
26 ~~January 1, 1978.~~

27 Sec. 2. G.S. 20-295 reads as rewritten:

28 "~~§ 20-295. Time to act upon applications; refusal of license;~~  
29 ~~notice; hearing. Action on application.~~

30 The Division shall ~~act upon all applications~~ either grant or  
31 deny an application for a license within 30 days after ~~receipt~~  
32 ~~thereof, by either granting or refusing the same.~~ receiving it.  
33 Any applicant denied a license shall, upon his filing a written  
34 request ~~filed~~ within 30 days, be given a hearing at such the time  
35 and place ~~as determined by the Commissioner, or person designated~~  
36 ~~by him. All such hearings~~ Commissioner or a person designated by  
37 the Commissioner. A hearing shall be public and shall be held  
38 with reasonable promptness. ~~Any applicant denied a license for~~  
39 ~~failure to comply with the definition of an established place of~~  
40 ~~business, as defined in this Article, may not, nor shall anyone~~  
41 ~~else apply for a license for such premises, for which a license~~  
42 ~~was denied, until the expiration of 60 days from the date of the~~  
43 ~~rejection of such application."~~

44 Sec. 3. G.S. 20-79 reads as rewritten:



1 ~~"§ 20-79. Registration by manufacturers and dealers. Dealer~~  
2 ~~license plates.~~

3 ~~(a) How To Get A Dealer Plate. -- Every manufacturer of or~~  
4 ~~dealer in motor vehicles, trailers or semitrailers shall apply to~~  
5 ~~the Motor Vehicle Division for a license as such upon official~~  
6 ~~forms and shall in his application give the name of the~~  
7 ~~manufacturer or dealer and his bona fide address of each partner;~~  
8 ~~if a corporation, the name of the corporation and the state of~~  
9 ~~incorporation; the bona fide address of the place of business;~~  
10 ~~whether a dealer in new vehicles or in used vehicles and shall~~  
11 ~~state how long in business. Upon receipt of said application the~~  
12 ~~Division shall upon the payment of fees as required by law issue~~  
13 ~~a license to such applicant, together with number plates, which~~  
14 ~~plates shall bear thereon a distinctive number, the name of this~~  
15 ~~State, which may be abbreviated, the year for which issued,~~  
16 ~~together with the word dealer or a distinguishing symbol~~  
17 ~~indicating that such plate or plates are issued to a dealer. The~~  
18 ~~plates so issued may during the year for which issued be~~  
19 ~~transferred from one vehicle to another owned and operated by~~  
20 ~~such manufacturer or dealer.~~

21 ~~Dealer and manufacturer plates shall after June 30, 1980, be~~  
22 ~~issued on a fiscal year basis beginning July 1, and plates issued~~  
23 ~~for fiscal year beginning July 1 shall expire on June 30~~  
24 ~~following the date of issuance.~~

25 ~~Any person to whom license and number plates are issued under~~  
26 ~~the provisions of this subsection upon discontinuing business as~~  
27 ~~a dealer or manufacturer shall forthwith surrender to the~~  
28 ~~Division license and all number plates so issued to him.~~

29 ~~No person, firm, or corporation shall engage in the business of~~  
30 ~~buying, selling, distributing or exchanging motor vehicles,~~  
31 ~~trailers or semitrailers in this State unless he or it qualifies~~  
32 ~~for and obtains the license required by this section.~~

33 ~~Any person, firm, or corporation violating any provision of~~  
34 ~~this subsection shall be guilty of a misdemeanor and for each~~  
35 ~~offense shall be fined not less than one hundred dollars~~  
36 ~~(\$100.00) nor more than one thousand dollars (\$1,000) and may be~~  
37 ~~imprisoned for not more than 60 days, or both such fine and~~  
38 ~~imprisonment.~~

39 ~~A dealer licensed under Article 12 of this Chapter may obtain a~~  
40 ~~dealer license plate by filing an application with the Division~~  
41 ~~and paying the required fee. An application must be filed on a~~  
42 ~~form provided by the Division. The required fee is the amount~~  
43 ~~set by G.S. 20-87(7).~~

1 (b) Number of Plates. -- ~~Every manufacturer of or dealer in~~  
2 ~~motor vehicles shall obtain and have in his possession a~~  
3 ~~certificate of title issued by the Division to such manufacturer~~  
4 ~~or dealer of each vehicle owned and operated upon the highways by~~  
5 ~~such manufacturer or dealer, except that a certificate of title~~  
6 ~~shall not be required or issued for any new vehicle to be sold as~~  
7 ~~such by a manufacturer or dealer prior to the sale of such~~  
8 ~~vehicle by the manufacturer or dealer; and except that any dealer~~  
9 ~~or any employee of any dealer may operate any motor vehicle,~~  
10 ~~trailer or semitrailer, the property of the dealer, for the~~  
11 ~~purpose of furthering the business interest of the dealer in the~~  
12 ~~sale, demonstration and servicing of motor vehicles, trailers and~~  
13 ~~semitrailers, of collecting accounts, contacting prospective~~  
14 ~~customers and generally carrying out routine business necessary~~  
15 ~~for conducting a general motor vehicle sales business: Provided,~~  
16 ~~that no use shall be made of dealer's demonstration plates on~~  
17 ~~vehicles operated in any other business dealers may be engaged~~  
18 ~~in: Provided further, that dealers may allow the operation of~~  
19 ~~motor vehicles owned by dealers and displaying dealer's~~  
20 ~~demonstration plates in the personal use of persons other than~~  
21 ~~those employed in the dealer's business: Provided further, that~~  
22 ~~said persons shall, at all times while operating a motor vehicle~~  
23 ~~under the provisions of this section, have in their possession a~~  
24 ~~certificate on such form as approved by the Commissioner from the~~  
25 ~~dealer, which shall be valid for not more than 96 hours. This~~  
26 ~~certificate may be renewed for one additional 96-hour period,~~  
27 ~~pursuant to rules and regulations promulgated by the~~  
28 ~~Commissioner. A dealer who was licensed under Article 12 of this~~  
29 ~~Chapter for the previous twelve-month period ending April 30 may~~  
30 ~~obtain the number of dealer license plates allowed by the~~  
31 ~~following table; the number allowed is based on the number of~~  
32 ~~motor vehicles the dealer sold during the relevant twelve-month~~  
33 ~~period and the average number of qualifying sales representatives~~  
34 ~~the dealer employed during that same twelve-month period:~~

<u>Vehicles Sold In Relevant</u>	<u>Maximum Number of Plates</u>
<u>12-Month Period</u>	
<u>Fewer than 5</u>	<u>None</u>
<u>At least 5 but less than 10</u>	<u>1</u>
<u>At least 10 but less than 25</u>	<u>2</u>
<u>At least 25 but less than 50</u>	<u>4</u>
<u>50 or more</u>	<u>At least 4, but no more</u>
	<u>than 4 times the average</u>
	<u>number of qualifying sales</u>

1 representatives employed  
2 by the dealer during the  
3 relevant 12-month period.  
4

5 A dealer who was not licensed under Article 12 of this Chapter  
6 for part or all of the previous twelve-month period ending April  
7 30 may obtain the number of dealer license plates that equals  
8 four times the number of qualifying sales representatives  
9 employed by the dealer on the date the dealer files the  
10 application. A "qualifying sales representative" is a sales  
11 representative who works for the dealer at least 25 hours a week  
12 on a regular basis and is compensated by the dealer for this  
13 work.

14 A dealer who sold fewer than 50 motor vehicles the previous  
15 twelve-month period ending April 30 but has sold at least 50  
16 motor vehicles since May 1 may apply for additional dealer  
17 license plates at any time. The maximum number of dealer license  
18 plates the dealer may obtain is the number the dealer could have  
19 obtained if the dealer had sold at least 50 motor vehicles in the  
20 previous twelve-month period ending April 30.

21 A dealer who applies for a dealer license plate must certify to  
22 the Division the number of motor vehicles the dealer sold in the  
23 relevant period. Making a false certification is a misdemeanor  
24 and is grounds for denial, suspension, or revocation of a  
25 dealer's license under G.S. 20-294.

26 (c) Form and Duration. -- No manufacturer of or dealer in motor  
27 vehicles, trailers or semitrailers shall cause or permit any such  
28 vehicle owned by such person to be operated or moved upon a  
29 public highway without there being displayed upon such vehicle a  
30 number plate or plates issued to such person, either under G.S.  
31 20-63 or under this section. A dealer license plate is subject  
32 to G.S. 20-63, except for the requirement that the plate display  
33 the registration number of a motor vehicle and the requirement  
34 that the plate be a "First in Flight" plate. In addition, a  
35 dealer license plate must have a distinguishing symbol  
36 identifying the plate as a dealer license plate.

37 A dealer license plate is issued for a fiscal year beginning  
38 July 1 and ending June 30. During the fiscal year for which it  
39 is issued, a dealer may transfer a dealer license plate from one  
40 vehicle to another. When a dealer surrenders the license issued  
41 under Article 12 of this Chapter or the Division revokes the  
42 dealer's license, the dealer must surrender to the Division all  
43 dealer license plates issued to the dealer.

1 ~~(d) Restrictions on Use. -- Dealer's license plates may be used~~  
2 ~~on motor vehicles owned by, or assigned to, duly licensed motor~~  
3 ~~vehicle dealers of this State when operated on the highways of~~  
4 ~~this State by the dealer, corporate officers of the dealership,~~  
5 ~~salespersons or full-time employees of the dealership, and any~~  
6 ~~designated part-time employees of the dealership; provided, the~~  
7 ~~vehicle is subject to the proof of financial responsibility~~  
8 ~~requirements of Article 9A of this Chapter. A dealership owner~~  
9 ~~who desires to use dealer's license plates as herein provided~~  
10 ~~shall make application on a form provided by the Division of~~  
11 ~~Motor Vehicles and pay the annual amount set in G.S. 20-87(7).~~  
12 A dealer license plate may be displayed only on a motor vehicle  
13 that meets all of the following requirements:

- 14 (1) Is in the inventory of a dealer.  
15 (2) Is covered by liability insurance that meets the  
16 requirements of Article 9A of this Chapter.  
17 (3) Is not used by the dealer in another business in  
18 which the dealer is engaged.  
19 (4) Is driven on a highway by a person who is an  
20 officer of the dealer, an employee of the dealer,  
21 or a person to whom the dealer has issued a  
22 demonstration permit and who carries the following  
23 while driving the motor vehicle:  
24 a. The manufacturer's certificate of origin for  
25 the motor vehicle, if it is new.  
26 b. The certificate of title for the motor  
27 vehicle, if it is not new.  
28 b. Any demonstration permit issued to the driver  
29 of the motor vehicle.

30 A dealer may issue a demonstration permit for a motor vehicle  
31 to a person licensed to drive that type of motor vehicle. A  
32 demonstration permit authorizes the person named in the permit to  
33 drive the motor vehicle described in the permit for a period of  
34 96 hours after the time the permit is issued. A dealer may, for  
35 good cause, renew a demonstration permit for one additional 96-  
36 hour period.

37 A dealer may not lend, rent, lease, or otherwise place a dealer  
38 license plate at the disposal of a person except as authorized by  
39 this section. Violation of any of the restrictions on the use of  
40 dealer license plates is a misdemeanor and is grounds for denial,  
41 suspension, or revocation of a dealer's license under G.S. 20-  
42 294.

43 (e) Transfer of Dealer Registration. -- No change in the name  
44 of a firm, partnership or corporation, nor the taking in of a new

1 partner, nor the withdrawal of one or more of the firm, shall be  
2 considered a new business; but if any one or more of the partners  
3 remain in the firm, or if there is change in ownership of less  
4 than a majority of the stock, if a corporation, the business  
5 shall be regarded as continuing and the dealers' plates  
6 originally issued may continue to be used."

7       Sec. 4. G.S. 20-288(a) reads as rewritten:

8       "~~(a) Application for a license shall be made to the Division~~  
9 ~~at such time, in such form, and contain such information as the~~  
10 ~~Division shall require, and shall be accompanied by the required~~  
11 ~~fee. A person may obtain a license by filing an application with~~  
12 ~~the Division. An application must be on a form provided by the~~  
13 ~~Division and contain the information required by the Division.~~  
14 ~~An application for a license must be accompanied by the required~~  
15 ~~fee and by an application for a dealer license plate."~~

16       Sec. 5. G.S. 20-79.2 reads as rewritten:

17 "§ 20-79.2. Transporter registration plates.

18       (a) Who Can Get A Plate. -- A person engaged in a business  
19 requiring the limited operation of a motor vehicles to vehicle  
20 for any of the following purposes may obtain a transporter plate  
21 authorizing the movement of the vehicle for the specific purpose:

22           (1) To facilitate the manufacture, construction,  
23 rebuilding, or delivery of a new or used truck cabs  
24 or bodies motor vehicle between manufacturer,  
25 dealer, seller, or purchaser, or the purchaser.

26           (2) To foreclosure or repossession of repossess a motor  
27 vehicles, or the vehicle.

28           (3) To pickup and delivery of pick up or deliver a  
29 motor vehicles vehicle to be prepared for sale by  
30 dealers, or a dealer.

31           (4) To move a motor vehicle that is owned by a public  
32 utility, as defined in G.S. 62-3(23)a, engaged in  
33 the movement of replaced vehicles for sale, may  
34 apply to the Commissioner for special registration  
35 to be issued to and used by the person or utility  
36 upon the following conditions: and is a replaced  
37 vehicle offered for sale.

38           (5) To take a motor vehicle either to or from a motor  
39 vehicle auction where the vehicle will be or was  
40 offered for sale.

41           (6) To road test a repaired truck whose GVWR is at  
42 least 15,000 pounds when the test is performed  
43 within a 10-mile radius of the place where the  
44 truck was repaired and the truck is owned by a

1 person who has a fleet of at least five trucks  
2 whose GVWRs are at least 15,000 pounds and who  
3 maintains the place where the truck was repaired.

4 (7) To move a mobile office, a mobile classroom, or a  
5 manufactured home when the Utilities Commission has  
6 authorized the move.

7 (b) How To Get A Plate. -- A person may obtain a transporter  
8 plate by filing an application with the Division and paying the  
9 required fee. An application must be on a form provided by the  
10 Division and contain the information required by the Division.  
11 The fee for a transporter plate is the same as the fee set in  
12 G.S. 20-87(7) for a dealer license plate.

13 ~~(1) Application for Registration.--Only one application~~  
14 ~~shall be required from each person, and such application for~~  
15 ~~registration under this section shall be filed with the~~  
16 ~~Commissioner of Motor Vehicles in such form and detail as the~~  
17 ~~Commissioner shall prescribe, setting forth:~~

18 a. ~~The name and residence address of the~~  
19 ~~applicant; if an individual, the name under~~  
20 ~~which he intends to conduct business; if a~~  
21 ~~partnership, the name and residence address of~~  
22 ~~each member thereof, and the name under which~~  
23 ~~the business is to be conducted; if a~~  
24 ~~corporation, the name of the corporation and~~  
25 ~~the name and residence address of each of its~~  
26 ~~officers.~~

27 b. ~~The complete address or addresses of the place~~  
28 ~~or places where the business is to be~~  
29 ~~conducted.~~

30 c. ~~Such further information as the Commissioner~~  
31 ~~may require.~~

32 ~~(2) Applications for registration under this section~~  
33 ~~shall be verified by the applicant, and the~~  
34 ~~Commissioner may require the applicant for~~  
35 ~~registration to appear at such time and place as~~  
36 ~~may be designated by the Commissioner for~~  
37 ~~examination to enable him to determine the accuracy~~  
38 ~~of the facts set forth in the written application,~~  
39 ~~either for initial registration or renewal thereof.~~

40 ~~(3) Fees.-- The annual fee for such registration under~~  
41 ~~this section or renewal thereof shall be nineteen~~  
42 ~~dollars (\$19.00), plus an annual fee of six dollars~~  
43 ~~(\$6.00) for each set of plates. The application for~~  
44 ~~registration and number plates shall be accompanied~~

1 by the required annual fee. There shall be no  
2 refund of registration fee or fees for number  
3 plates in the event of suspension, revocation or  
4 voluntary cancellation of registration. There shall  
5 be no quarterly reduction in fees under this  
6 section.

7 (4) ~~Issuance of Certificate. -- If the Commissioner~~  
8 ~~approves the application, he shall issue a~~  
9 ~~registration certificate in such form as he may~~  
10 ~~prescribe. A registrant shall notify the~~  
11 ~~Commissioner of any change of address of his~~  
12 ~~principal place of business within 30 days after~~  
13 ~~such change is made, and the Commissioner shall be~~  
14 ~~authorized to cancel the registration upon failure~~  
15 ~~to give such notice.~~

16 (5) ~~Use. -- Transporter number plates issued under this~~  
17 ~~section may be transferred from vehicle to vehicle,~~  
18 ~~but shall be used only for the limited operation of~~  
19 ~~vehicles in connection with the manufacture,~~  
20 ~~construction, rebuilding, or delivery of new or~~  
21 ~~used truck cabs or bodies between the manufacturer,~~  
22 ~~dealer, seller, or purchaser, or with the~~  
23 ~~foreclosure or repossession of vehicles, or with~~  
24 ~~the pickup and delivery of motor vehicles to be~~  
25 ~~prepared for sale by dealers, or, if the registrant~~  
26 ~~is a public utility, for the limited movement of~~  
27 ~~vehicles in connection with the sale of a replaced~~  
28 ~~vehicle.~~

29 (6) ~~Suspension, Revocation or Refusal to Issue or to~~  
30 ~~Renew a Registration.--The Commissioner may deny~~  
31 ~~the application of any person for registration~~  
32 ~~under this section and may suspend or revoke a~~  
33 ~~registration or refuse to issue a renewal thereof~~  
34 ~~if he determines that such applicant or registrant~~  
35 ~~has:~~

- 36 a. ~~Made a material false statement in his~~  
37 ~~application;~~  
38 b. ~~Used or permitted the use of number plates~~  
39 ~~contrary to law;~~  
40 c. ~~Been guilty of fraud or fraudulent practices;~~  
41 ~~or~~  
42 d. ~~Failed to comply with any of the rules and~~  
43 ~~regulations of the Commissioner for the~~

1 ~~enforcement of this section or with any~~  
2 ~~provisions of this Chapter applicable thereto.~~

3 (c) Form, Duration, and Transfer. -- A transporter plate is a  
4 type of commercial license plate. A transporter plate is issued  
5 on a calendar year basis. During the calendar year for which it  
6 is issued, a person may transfer a transporter plate from one  
7 vehicle to another as long as the vehicle is driven only for a  
8 purpose authorized by subsection (a).

9 ~~(b) Any person engaged in a business which owns and operates a~~  
10 ~~fleet of five or more trucks licensed for 15,000 pounds gross~~  
11 ~~weight or more who operates and maintains their own repair~~  
12 ~~facilities may be issued one transporter plate pursuant to~~  
13 ~~subsection (a) for the sole purpose of road testing their~~  
14 ~~repaired trucks which will become eligible to be licensed for~~  
15 ~~15,000 pounds gross weight or more, subject to weight limitations~~  
16 ~~as provided by law, within a 10-mile radius of the repair~~  
17 ~~facility. A motor vehicle liability insurance shall be~~  
18 ~~maintained on such trucks at all times."~~

19 Sec. 6. G.S. 20-79.3 is repealed.

20 Sec. 7. Sections 5 and 6 of this act become effective  
21 January 1, 1994. The remainder of this act becomes effective  
22 July 1, 1993.



### Explanation of Proposal 23

This proposal addresses the problem of the misuse of motor vehicle dealer license plates. As perceived by the Revenue Laws Study Committee, the misuse of a dealer license plate occurs when a new or used motor vehicle dealer allows a dealer license plate to be used on a motor vehicle that is not, for all practical purposes, part of the inventory of the dealer.

The Committee was concerned about this problem because a motor vehicle that is improperly driven with a dealer license plate escapes property taxes, escapes motor vehicle title and registration fees, and receives an unfair advantage on automobile insurance. It escapes property taxes because it is supposedly part of the inventory of the dealer and is, therefore, exempted from property tax by the exemption for inventory. It escapes motor vehicle title and registration fees because the title to the vehicle has not been transferred to the person who uses the vehicle. It enjoys an unfair advantage on insurance because it is insured through the dealer's blanket liability insurance policy rather than through a policy that is specific to the vehicle.

This proposal tackles the misuse of dealer license plates in three ways. First, it imposes more stringent requirements on who can be engaged in business as a motor vehicle dealer. Second, it restricts the number of dealer license plates that can be issued to the same dealer. Third, it expands the allowable uses of transporter plates, thereby eliminating the need for dealer license plates in many instances.

Sections 1 and 2 of the proposal contain the changes in the requirements for licensure as a motor vehicle dealer. Section 1 imposes the following restrictions on those who apply for a motor vehicle wholesaler's license or a motor vehicle dealer's license:

- (1) It prohibits an established office or an established salesroom from being a residence. Under current law, they can be a residence as long as the residence has a separate entrance for the established office or established salesroom. An established office is a wholesaler's place of business and an established salesroom is a new or used motor vehicle dealer's place of business.

- (2) It increases the minimum office space requirement for both an established office and an established salesroom from 96 square feet to 250 square feet.
- (3) It requires both an established office and an established salesroom to have adjacent space for the display of at least 10 motor vehicles.
- (4) It requires the letters on a sign for an established salesroom to be six inches tall rather than three inches.
- (5) It removes the 1978 square footage "grandfather" for established salesrooms. In 1978, the square footage requirement of an established place of business was changed from 64 square feet to its present 96 square feet, but existing places of business were not required to comply with the change. This proposal eliminates the grandfather provision so that all established salesrooms must conform to the new 250 square feet requirement.

Section 2 is a conforming change that accompanies Section 1. It removes the limit on how often a person can apply for a motor vehicle dealer's license. Current law prohibits a person whose application for a dealer's license is denied from applying again for a period of 6 months. The limitation is removed because its original purpose is unclear and because an applicant who is rejected on the basis of the increased footage requirements may immediately expand an office to meet the requirement and, in that circumstance, should be able to get a license without delay.

Section 3 restricts the number of dealer license plates that may be issued to the same dealer and reorganizes the affected statute to eliminate obsolete provisions and duplications. It bases the number of dealer license plates a dealer can obtain on the number of motor vehicles the dealer sold during the preceding twelve-month period ending April 30 and, for those dealers who sold more than 50 vehicles during that period, on the average number of qualifying sales representatives employed by the dealer. The chart in proposed G.S. 20-79(b) in Section 3 sets out the limits on the number of plates and defines a "qualifying sales representative" as a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work. This scheme resembles, but is not identical to, that used by Virginia.

In reorganizing G.S. 20-79, the portions of that statute that deal with dealer licensing were deleted because they have been superseded by Article 12 of Chapter 20 of the General Statutes. G.S. 20-79 was enacted before Article 12 and conforming changes were not made to G.S. 20-79 when Article 12 was enacted. In Article 12, G.S. 20-287 requires motor vehicle dealers and manufacturers to be licensed; G.S. 20-293 states that only licensed dealers can receive dealer license plates; and G.S. 20-308 makes it a general misdemeanor to fail to get a license or for a person who is not a dealer to get dealer plates.

Section 4 is a conforming change that accompanies Section 3. It moves the requirement that an application for a motor vehicle dealer's license be accompanied by an application for dealer license plates from G.S. 20-79 to G.S. 20-288(a). The sentence is moved because it concerns a requirement for licensure as a motor vehicle dealer and is, therefore, more appropriate in G.S. 20-288(a).

Section 5 expands the allowable uses of transporter plates so that the need for dealer license plates is reduced, changes the fee for a transporter plate, and makes technical changes to the affected statute. The proposal allows transporter plates to be used to facilitate the manufacture, construction, rebuilding, or delivery of any motor vehicle between manufacturer, dealer, seller, or purchaser. Current law restricts the use of transporter plates in these circumstances to a new or used truck cab or body. The proposal also specifically authorizes the use of transporter plates on a motor vehicle that is being taken either to or from a motor vehicle auction where it will be or was offered for sale.

Section 5 changes the fee for a transporter plate to make it the same as for a dealer license plate. The change is made so that a dealer will neither be encouraged to nor discouraged from using a transporter plate because of any difference in the annual fees for the two plates. The current fee for a transporter plate is \$25 for the first plate issued in a year to a person and \$6 for each additional transporter plate issued to the same person during the same year. The fee for a dealer license plate is one-half the regular fee. The regular fee for a passenger vehicle is currently \$20.00, so the current fee for a dealer license plate for a passenger vehicle is \$10.00.

As part of the technical changes made by Section 5, G.S. 20-79.2(b) and G.S. 20-79.3 are incorporated in the list in amended G.S. 20-79.2(a). Thus, although proposed G.S. 20-79.2(a)(6) and (a)(7) appear new, they are not.

Section 6 is a conforming change that accompanies Section 5. It repeals the statute that currently authorizes the use of transporter plates for house trailers and mobile homes because the authorization is moved to revised G.S. 20-79.2(a) in Section 5.

Section 7 states when the proposal is to become effective. The sections on dealer requirements and dealer license plates become effective July 1, 1993. The sections on transporter plates become effective January 1, 1994. The different effective dates reflect the different cycle for issuing dealer license plates and transporter plates. Dealer license plates are issued on a fiscal year basis and transporter plates are issued on a calendar year basis.

Proposal #23: Dealer Plate/License Changes

Background:

The Revenue Laws Study Committee discussed the issue of the misuse of dealer plates because of widespread complaints from the general public. Almost every legislator has received correspondence from his/her district constituents that outline, often in great detail, the many observed abuses of dealer license plates. The general perception is that dealer plates are often obtained or utilized to avoid paying highway taxes, fees, and local property taxes on personal use vehicles.

The Division of Motor Vehicles has issued over 119, 112 dealer plates to registered motor vehicle dealers in North Carolina for FY 1992-93. These plates were issued to the following categories of dealers:

Franchise	31,728	27%
Independent	83,375	70%
Motorcycle	1,876	1.5%
Manufacturer	1,750	1.4%
Trailer	383	0.1%

Summary:

This proposal incorporates several approaches to solving the problem of the misuse of dealer plates. Sections 1 and 2 address minimum requirements for a motor vehicle dealer license. Current requirements are modified to require an office or salesroom to contain at least 250 square feet (current law is 96 square feet), to add a provision that the designated office cannot be contained in a building that is also a residence, and to add a requirement that the licensee provide an area for the display of at least 10 vehicles.

Section 3 restricts the number of dealer plates that can be obtained in any one year by a motor vehicle dealer. It requires dealers to certify to the Division of Motor Vehicles the number of vehicles sold by the dealer in the last 12-month period. Dependent upon the sales volume, the Division will be authorized to issue the following number of plates to each dealer:

<u>Vehicles Sold in Relevant 12-Month Period</u>	<u>Maximum Number of Plates</u>
Fewer than 5	None
At least 5 but less than 10	1
At least 10 but less than 25	2
At least 25 but less than 50	4
50 or more	At least 4, but no more than 4 times the average number of qualifying sales

Section 4 authorizes the use of transporter plates for the additional purposes of movement of a motor vehicle either to or from a motor vehicle auction and of movement of any motor vehicle to facilitate the manufacture, construction, rebuilding, or delivery of the vehicle between manufacturer, dealer, seller, or purchaser.

Effective Date:

Upon ratification

Fiscal Effect:

The recommended changes in this proposal will have a slightly positive effect on revenues in the Highway Fund and the Highway Trust Fund. Due to the new restriction on dealer plate issuance, the owners of vehicles obviously not for resale who currently use dealer tags will find it necessary to register and title their vehicles through the standard registration process if they wish to continue operation of their vehicle on North Carolina highways. Instead of the \$10 dealer plate fee, the Highway Fund will receive an annual \$20 registration fee and a \$35 title fee. In addition, the Highway Trust Fund will benefit from the 3% highway use tax paid on these vehicles, and local governments will benefit from payment of annual property taxes on vehicles that were previously recorded as inventory.

**REVENUE COMPARISON OF TAXES & FEES PAID**

	Dealer Tags	Standard Registration
Plate fee	\$10	\$20
Title fee	None	\$35
Highway use tax	None	\$450 (on \$15,000 vehicle)
Property tax	None	\$150 (approximate)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S or H

D

Proposal 24 (93-LJX-5(1.3))  
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Special/Multiyear Plate Changes. (Public)

---

Sponsors: .

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW ALL TRAILERS TO OBTAIN MULTIYEAR LICENSE PLATES,  
3 TO ALLOW OWNERS OF HORSELESS CARRIAGES TO OBTAIN MULTIYEAR  
4 LICENSE PLATES, TO CLARIFY THE DEFINITION OF SEMITRAILER, AND  
5 TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES TO THE LAWS  
6 CONCERNING SPECIAL LICENSE PLATES.  
7 The General Assembly of North Carolina enacts:  
8 Section 1. G.S. 20-88(c) reads as rewritten:  
9 "~~(c) There shall be paid to the Division annually, as of the~~  
10 ~~first day of January, for the registration and licensing of~~  
11 ~~trailers or semitrailers, The fee for a trailer is ten dollars~~  
12 ~~(\$10.00) for each year or any part of the license year for which~~  
13 ~~said license is issued. a year. The fee is payable on or before~~  
14 ~~January 1 of each year. Upon the application of the owner of a~~  
15 ~~semitrailer, trailer, the Division may issue a multiyear plate~~  
16 ~~and registration card for the semitrailer trailer for a fee of~~  
17 ~~seventy-five dollars (\$75.00). A multiyear plate and~~  
18 ~~registration card for a semitrailer trailer are valid until the~~  
19 ~~owner transfers the semitrailer trailer to another person or~~  
20 ~~surrenders the plate and registration card to the Division. A~~  
21 ~~multiyear plate may not be transferred to another vehicle.~~  
22 The Division shall issue a multiyear ~~semitrailer trailer~~ plate  
23 in a different color than an annual ~~semitrailer trailer~~ plate and

1 shall include the word 'multiyear' on the plate. The Division  
2 may not issue a multiyear plate for a house trailer."

3 Sec. 2. G.S. 20-4.01(31)d. and e. read as rewritten:

4 "d. Semitrailers. -- ~~Vehicles without motive power~~  
5 ~~designed for carrying property or persons and~~  
6 ~~for being drawn by a motor vehicle, and so~~  
7 ~~constructed that part of their weight or their~~  
8 ~~load rests upon or is carried by the pulling~~  
9 ~~vehicle.~~ Trailers that are supported at their  
10 front end by the device of a fifth wheel  
11 supplied by a truck tractor or by converter  
12 gear.

13 "e. Trailers. -- Vehicles without motive power  
14 designed for carrying property or persons  
15 ~~wholly on their own structure~~ and to be drawn  
16 by a motor vehicle, including 'pole trailers'  
17 or a pair of wheels used primarily to balance  
18 a load rather than for purposes of  
19 transportation."

20 Sec. 3. G.S. 20-79.4(b) reads as rewritten:

21 " (b) Types. -- The Division shall issue the following types of  
22 special registration plates:

23 (1) Administrative Officer of the Courts. -- Issuable  
24 to the Director of the Administrative Office of the  
25 Courts. The plate shall bear the phrase 'J-20'.

26 (2) Amateur Radio Operator. -- Issuable to an amateur  
27 radio operator who holds an unexpired and unrevoked  
28 amateur radio license issued by the Federal  
29 Communications Commission and who asserts to the  
30 Division that a portable transceiver is carried in  
31 the vehicle. The plate shall bear the phrase  
32 'Amateur Radio.' The plate shall bear the  
33 operator's official amateur radio call letters, or  
34 call letters with numerical or letter suffixes so  
35 that an owner of more than one vehicle may have the  
36 call letters on each.

37 (3) Civil Air Patrol Member. -- Issuable to an active  
38 member of the North Carolina Wing of the Civil Air  
39 Patrol. The plate shall bear the phrase 'Civil Air  
40 Patrol'. A plate issued to an officer member shall  
41 begin with the number '201' and the number shall  
42 reflect the seniority of the member; a plate issued  
43 to an enlisted member, a senior member, or a cadet  
44 member shall begin with the number '501'.



- 1 (4) Class D Citizen's Radio Station Operator. --  
2 Issuable to a Class D citizen's radio station  
3 operator licensed by the Federal Communications  
4 Commission. The plate shall bear the operator's  
5 official Class D citizen's radio station call  
6 letters.
- 7 (5) Clerk of Superior Court. -- Issuable to a clerk of  
8 superior court. The plate shall bear the phrase  
9 'Clerk Superior Court' and the letter 'C' followed  
10 by a number that indicates the county the clerk  
11 serves.
- 12 (6) Coast Guard Auxiliary Member. -- Issuable to an  
13 active member of the United States Coast Guard  
14 Auxiliary. The plate shall bear the phrase 'Coast  
15 Guard Auxiliary'.
- 16 (6a) Collegiate Insignia Plate. -- Issuable to the  
17 registered owner of a motor vehicle in accordance  
18 with G.S. 20-81.12. The plate may bear a phrase or  
19 an insignia representing a public or private  
20 college or university.
- 21 (7) Congressional Medal of Honor Recipient. -- Issuable  
22 to a recipient of the Congressional Medal of Honor.
- 23 (8) Disabled Veteran. -- Issuable to a veteran of the  
24 armed forces of the United States who suffered a  
25 100% service-connected disability.
- 26 (9) District Attorney. -- Issuable to a North Carolina  
27 or United States District Attorney. The plate  
28 issuable to a North Carolina district attorney  
29 shall bear the letters 'DA' followed by a number  
30 that represents the prosecutorial district the  
31 district attorney serves. The plate for a United  
32 States attorney shall bear the phrase 'U.S.  
33 Attorney' followed by a number that represents the  
34 district the attorney serves, with 1 being the  
35 Eastern District, 2 being the Middle District, and  
36 3 being the Western District.
- 37 (10) Fire Department or Rescue Squad Member. -- Issuable  
38 to an active regular member or volunteer member of  
39 a fire department, rescue squad, or both a fire  
40 department and rescue squad. The plate shall bear  
41 the words 'Firefighter', 'Rescue Squad', or  
42 'Firefighter-Rescue Squad'.
- 43 (11) Historic Vehicle Owner. -- Issuable for a motor  
44 vehicle that is at least 35 years old measured from

1 the date of manufacture. The plate for a vehicle  
2 that is 35 to 50 years old shall bear the phrase  
3 'Antique'. The plate for a vehicle that is at  
4 least 50 years old shall bear the phrase 'Horseless  
5 Carriage'. A plate issued under this subdivision  
6 for a horseless carriage may be an annual plate or  
7 a multiyear plate. A multiyear plate is valid  
8 until the vehicle's owner transfers the vehicle to  
9 another person or surrenders the plate to the  
10 Division. A multiyear plate may not be transferred  
11 to another vehicle.

12 (11a) Historical Attraction Plate. -- Issuable to the  
13 registered owner of a motor vehicle in accordance  
14 with G.S. 20-81.12. The plate may bear a phrase  
15 or an insignia representing a publicly owned or  
16 nonprofit historical attraction located in North  
17 Carolina.

18 (12) Honorary Plate. -- Issuable to a member of the  
19 Honorary ~~Consular~~ Consular Corps, who has been  
20 certified by the U. S. State Department, the plate  
21 shall bear the words 'Honorary ~~Consular~~ Consular  
22 Corps' and a distinguishing number based on the  
23 order of issuance.

24 (13) Judge or Justice. -- Issuable to a sitting or  
25 retired judge or justice in accordance with G.S.  
26 20-79.6.

27 (14) Legislator. -- Issuable to a member of the North  
28 Carolina General Assembly. The plate shall bear  
29 the words 'Senate' or 'State House' followed by  
30 the Senator's or Representative's assigned seat  
31 number.

32 (15) Marshal. -- Issuable to a United States Marshal.  
33 The plate shall bear the phrase 'U.S. Marshal'  
34 followed by a number that represents the district  
35 the Marshal serves, with 1 being the Eastern  
36 District, 2 being the Middle District, and 3 being  
37 the Western District.

38 (16) Military Reservist. -- Issuable to a member of a  
39 reserve component of the armed forces of the  
40 United States. The plate shall bear the name and  
41 insignia of the appropriate reserve component.  
42 Plates shall be numbered sequentially for members  
43 of a component with the numbers 1 through 5000  
44 reserved for officers, without regard to rank.

- 1 (16a) Military Retiree. -- Issuable to an individual who  
2 has retired from the armed forces of the United  
3 States. The plate shall bear the ~~phrase 'U.S.~~  
4 ~~Armed Forces Retired'~~ word 'Retired' and the name  
5 and insignia of the branch of service from which  
6 the individual retired. The Division may not  
7 issue the plate authorized by this subdivision  
8 unless it receives at least 300 applications for  
9 the plate.
- 10 (17) National Guard Member. -- Issuable to an active or  
11 a retired member of the North Carolina National  
12 Guard. The plate shall bear the phrase "National  
13 Guard". A plate issued to an active member shall  
14 bear a number that reflects the seniority of the  
15 member; a plate issued to a commissioned officer  
16 shall begin with the number "1"; a plate issued to  
17 a noncommissioned officer with a rank of E7, E8,  
18 or E9 shall begin with the number "1601"; a plate  
19 issued to an enlisted member with a rank of E6 or  
20 below shall begin with the number "3001". The  
21 plate issued to a retired or separated member  
22 shall indicate the member's retired status.
- 23 (18) Partially Disabled Veteran. -- Issuable to a  
24 veteran of the armed forces of the United States  
25 who suffered a service connected disability of  
26 less than 100%.
- 27 (19) Pearl Harbor Survivor. -- Issuable to a veteran of  
28 the armed forces of the United States who was  
29 present at and survived the attack on Pearl Harbor  
30 on December 7, 1941. The plate will bear the  
31 phrase "Pearl Harbor Survivor" and the insignia of  
32 the Pearl Harbor Survivors' Association.
- 33 (20) Personalized. -- Issuable to the registered owner  
34 of a motor vehicle. The plate will bear the  
35 letters or letters and numbers requested by the  
36 owner. The Division may refuse to issue a plate  
37 with a letter combination that is offensive to  
38 good taste and decency. The Division may not  
39 issue a plate that duplicates another plate.
- 40 (21) Prisoner of War. -- Issuable to a the following:  
41 a. A member or veteran member of the armed forces  
42 of the United States who has been captured and  
43 held prisoner by forces hostile to the United  
44 States while serving in the armed forces.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(22) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(23) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(24) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(25) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters 'DOT' followed by a number from 1 to 85, as designated by the Governor.

(26) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase 'U.S. House' and shall be issued on the basis of Congressional district numbers.

(27) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase 'U.S. Senate' and shall be issued on the basis of seniority represented by the numbers 1 and 2."

Sec. 4. G.S. 20-79.7 reads as rewritten:

"§ 20-79.7. Fees for ~~Special Registration Plates~~ special registration plates and distribution of the fees.

(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
----------------------	------------------------------

1	Historical Attraction	\$30.00
2	Collegiate Insignia	\$25.00
3	Personalized	\$20.00
4	<del>All other Special Plates</del>	<del>\$10.00</del>
5	Historic Vehicle -- Annual	\$10.00
6	Historic Vehicle -- Multiyear	\$75.00
7	Active Member of the National Guard	None
8	All Other Special Plates	\$10.00

9 (b) Distribution of Fees. -- The Special Registration Plate  
 10 Account and the Collegiate and Historical Attraction Plate  
 11 Account are established within the Highway Fund. The Division  
 12 must credit the additional fee imposed for the special  
 13 registration plates listed in subsection (a) among the Special  
 14 Registration Plate Account (SRPA), the Collegiate and Historical  
 15 Attraction Plate Account (CHAPA), and the Recreation and Natural  
 16 Heritage Trust Fund (RNHTF), which is established under G.S. 113-  
 17 77.7, as follows:

18 <del>Special Plate</del>	<u>SRPA</u>	<u>CHAPA</u>	<u>RNHTF</u>
19 <u>Special Plate</u>	<u>SRPA</u>	<u>CHAPA</u>	<u>RNHTF</u>
20 Historical Attraction	\$10	\$20	0
21 In-State Collegiate Insignia	\$10	\$15	0
22 Out-of-state Collegiate Insignia	\$10	0	\$15
23 Personalized	\$10	0	\$10
24 Historic Vehicle -- Annual	\$10	0	0
25 Historic Vehicle -- Multiyear	\$75	0	0
26 All other Special Plates	\$10	0	0

27 (c) Use of Funds in Special Registration Plate Account. -- The  
 28 Division shall deduct the costs of special registration plates,  
 29 including the costs of issuing, handling, and advertising the  
 30 availability of the special plates, from the Special Registration  
 31 Plate Account. The Division shall transfer the remaining revenue  
 32 in the Account quarterly as follows:

- 33 (1) Thirty-three percent (33%) to the account of the  
 34 Department of Economic and Community Development  
 35 to aid in financing out-of-state print and other  
 36 media advertising under the program for the  
 37 promotion of travel and industrial development in  
 38 this State.
- 39 (2) Fifty percent (50%) to the Department of  
 40 Transportation to be used solely for the purpose  
 41 of beautification of highways other than those  
 42 designated as interstate. These funds shall be  
 43 administered by the Department of Transportation  
 44 for beautification purposes not inconsistent with  
 45 good landscaping and engineering principles.
- 46 (3) Seventeen percent (17%) to the account of the  
 47 Department of Human Resources to promote travel

1 accessibility for disabled persons in this State.  
2 These funds shall be used to collect and update  
3 site information on travel attractions designated  
4 by the Department of Economic and Community  
5 Development in its publications, to provide  
6 technical assistance to travel attractions  
7 concerning accommodation of disabled tourists, and  
8 to develop, print, and promote the publication  
9 ACCESS NORTH CAROLINA as provided in G.S.168-2.  
10 Any funds allocated for these purposes that are  
11 neither spent nor obligated at the end of the  
12 fiscal year shall be transferred to the Department  
13 of Administration for removal of man-made barriers  
14 to disabled travelers at State-funded travel  
15 attractions. Guidelines for the removal of man-  
16 made barriers shall be developed in consultation  
17 with the Department of Human Resources."

18 Sec. 5. G.S. 105-330.1 reads as rewritten:

19 "§ 105-330.1. Classification of motor vehicles.

20 All motor vehicles, except (i) motor vehicles exempt from  
21 registration under pursuant to G.S. 20-51, (ii) manufactured  
22 homes, mobile classrooms, and mobile offices, (iii) ~~semitrailers~~  
23 trailers or historic vehicles registered on a multiyear basis  
24 ~~under G.S. 20-88(c), basis,~~ and (iv) motor vehicles owned by a  
25 public service company or leased by a public service company and  
26 included in the company's system property under G.S. 105-335, are  
27 hereby designated a special class of property under authority of  
28 Article V, Sec. 2(2) of the North Carolina Constitution.  
29 Classified motor vehicles shall be listed and assessed as  
30 provided in this Article and taxes on classified motor vehicles  
31 shall be collected as provided in this Article."

32 Sec. 6. Sections 3, 4, and 5 of this act become  
33 effective July 1, 1993; Section 5 applies to vehicles registered  
34 or reregistered on or after that date. The remaining sections of  
35 this act are effective upon ratification.

36

## Explanation of Proposal 24

This proposal makes a number of changes to the laws governing multiyear trailer plates and special license plates. The proposal allows owners of historic vehicles that are "horseless carriages" to obtain multiyear plates instead of annual plates. Otherwise, the proposal makes either technical changes or changes that conform the statutes to administrative practice.

Section 1 of the proposal allows all trailers to obtain multiyear plates. It does not change the multiyear plate fee, which is \$75, or the annual plate fee, which is \$10.

Although Section 1 appears to make a substantive change, the Division of Motor Vehicles is currently allowing all trailers to obtain multiyear plates even though the statute states that a multiyear plate can be obtained only for a semitrailer. Thus, this change conforms the statute to the administrative practice.

Chapter 947 of the 1991 Session Laws (1992 Reg. Sess.) authorized multiyear plates for semitrailers effective January 1, 1993. After the enactment of that legislation, the Division of Motor Vehicles received requests for multiyear trailer plates from companies that rent trailers that are used in moving and are attached to the pulling motor vehicle by means of a hitch. The Division requested an Attorney General's opinion on whether Chapter 947 authorized the issuance of multiyear plates for these trailers. The Attorney General's opinion, which is Appendix L of this report, concluded that because the hitch of these trailers rests on the pulling motor vehicle, the trailers are semitrailers and are therefore eligible for multiyear plates.

The Division of Motor Vehicles asked the Revenue Laws Study Committee to make the law on this topic clear and to allow all trailers to obtain multiyear plates. The Division representatives stated that it was clear to them that the legislative intent of Chapter 947 was to extend the authorization for multiyear plates only to semitrailers but that they thought the same rationale that applies to semitrailers applies to many trailers. They then pointed out that the Division frequently cannot distinguish in its records between a semitrailer and any other type of trailer and that, consequently, if multiyear plates are restricted to semitrailers, the Division will have difficulty administering the

law. Finally, the Division representatives stated that they thought it was unlikely that many individuals with boat, camping, or other utility trailers would choose the \$75 multiyear plate over the \$10 annual plate.

The Committee considered the comments from the Division of Motor Vehicles and decided to authorize multiyear plates for all trailers. The Committee also decided to rewrite the definition of "semitrailer" so that it would be clear that "semitrailer" and "trailer" are not synonyms and that a semitrailer is a special kind of trailer. Section 1, as noted above, allows all trailers to obtain multiyear plates. Section 2 rewrites the definitions of "semitrailer" and "trailer" to make it clear that semitrailers are a subset of all trailers and are the type of trailers that are attached to the pulling motor vehicle by the device of a fifth wheel. Sections 1 and 2 are effective upon ratification.

Sections 3 and 4 make one substantive change and several technical or administrative changes to the statutes concerning special license plates. Special license plates are optional license plates that can be obtained in lieu of the regular license plates. The most notable of these plates are collegiate plates and personalized plates.

The substantive change made by these sections is to authorize owners of "horseless carriages" to obtain multiyear plates for an additional fee of \$75. A "horseless carriage" is a vehicle that is at least 50 years old. The multiyear plate for a horseless carriage would parallel the multiyear trailer plate; it would be valid for the life of the vehicle for which it was issued and could not be transferred from one vehicle to another.

The Committee decided to recommend a multiyear plate for historic vehicles that are considered to be horseless carriages because, from 1977 until 1991, an owner of one of these vehicles could obtain a permanent plate for the vehicle for a total fee of \$15. The permanent plate and reduced fee were eliminated in 1991 when the General Assembly adopted the uniform special plate fee structure recommended by the Legislative Research Commission's Study Committee on Personalized and Special Plates. Members of the Revenue Laws Study Committee continue to receive complaints about the elimination of the permanent plate.

The technical and administrative changes made by Section 3 are as follows:

- (1) The spelling of the word "Consular" is corrected.



- (2) The form of the retired military plate is changed to reduce the number of words the plate must display and to require the plate to display the appropriate insignia. These changes are made because there is not enough room on the plate for the number of words currently required and, in the Division of Motor Vehicle's experience, most people want the insignia of their branch of service on a military plate.
- (3) It requires 300 people to apply for a retired military plate before the plate can be issued. As of January 1, 1993, the Division had received only one request for this plate.
- (4) It allows the surviving spouse of a person who had a prisoner of war plate to keep the plate until that spouse remarries or does not renew the plate. This authorization was deleted from the law in 1991, but the Division has continued to allow the surviving spouses of prisoners of war to keep these plates.
- (5) It requires 300 people to apply for a street rod plate before the plate can be issued. During calendar year 1992, the Division received fewer than 20 applications for these plates.

Section 5 of the proposal makes a conforming change to the statute that specifies which motor vehicles are to be listed with the county tax assessor for purposes of local property taxes and which are not. This section adds trailers and historic vehicles that receive multiyear plates to the list of vehicles that must be listed annually with the local assessor. These vehicles must be listed annually because the multiyear plate takes them out of the annual vehicle registration renewal process. It is this annual vehicle registration that triggers payment of property taxes for those vehicles that are "classified" and are subject to the new system for collecting property taxes on motor vehicles.

Section 6 states when the proposal is to become effective. Sections 1, 2, and 6 are effective upon ratification. Sections 3, 4, and 5 become effective July 1, 1993.



Proposal #24: Special/Multi-Year Plate Changes

Background:

The 1992 General Assembly authorized the Division of Motor Vehicles to begin the issuance of permanent trailer plates beginning January 1, 1993. It was the intent of the General Assembly to limit the issuance of permanent plates to semi-trailers used in commercial trucking operations. The authorization to issue permanent plates to all trailers upon request, including utility trailers, was included in the version of the bill passed by the Senate but rejected by the House. The purpose for the limitation was the need to limit future revenue losses to the State Highway Fund.

Although the General Assembly's intent was clear to all parties involved in the discussion of permanent plates in the 1992 Session, the Attorney General's Office has since issued an opinion that the statutory language authorizing permanent plates does not sufficiently distinguish commercial semi-trailers from all trailers in general. Therefore, it is their recommendation that the Division of Motor Vehicles must make permanent plates available to all trailers beginning January 1, 1993. The Division has indicated they will comply with the opinion of the Attorney General and will make permanent plates available for all trailers come the first of January, 1993, regardless of legislative intent.

Summary:

The proposal makes several changes to the statutes that authorize the Division of Motor Vehicles to issue special registration plates and permanent trailer plates:

1. The language authorizing the issuance of permanent trailer plates is modified to include all types of trailers,
2. The issuance of Prisoner of War special registration plates is authorized for surviving spouses,
3. The issuance of retired military and Street Rod special registration plates are authorized only upon receipt of 300 applications for these plates at the Division of Motor Vehicles.
4. A permanent plate is authorized for horseless carriages.

Effective Date:

July 1, 1993

Fiscal Effect:

The changes proposed for permanent trailer plates and Prisoner of War plates conform to current administrative practice, and as such will have no fiscal impact on FY 1993-94.

The changes proposed for street rods will have the effect of reducing the number of special registration plates, which will impact Special Registration Fund revenues. Currently the Division of Motor Vehicles has on file valid registrations for 17 Street Rod plates. Elimination of these plates will cause an annual \$170 loss to the Special Registration Fund.

The Division of Motor Vehicles has determined that the startup costs of design, printing and stamping of a newly authorized special registration plate are not recovered until at least 300 applications for that plate are received. Within the last two years, it has been the practice to include a minimum threshold of applications for new special plates. The retired military plate authorization enacted by the 1992 General Assembly neglected to include this provision. The proposed threshold of 300 applications before plate issuance ensures that initial expenditures for plate development are substantially reduced by new revenues generated from fees collected for that plate.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

D

Proposal 25 (93-LC-039(1.1))  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

---

Sponsors:

---

Referred to:

---

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

4 Whereas, the Legislative Research Commission has been  
5 authorized by the 1977, 1979, 1981, 1983, 1985, 1987, 1989, and  
6 1991 General Assemblies to conduct a study of the revenue laws of  
7 North Carolina; and

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

12 Whereas, the Revenue Laws Study Committee has proved to  
13 be an excellent forum for both taxpayers and tax administrators  
14 to present their complaints about existing law and make  
15 suggestions to improve the law;  
16 Now, therefore, be it resolved by the House of Representatives,  
17 the Senate concurring:

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

1 the Commission shall include an estimate of the amount of the  
2 increase or decrease.

3           Sec. 2. The Commission may call upon the Department of  
4 Revenue to cooperate with it in its study of the revenue laws.  
5 The Secretary of Revenue shall ensure that the Department's staff  
6 cooperates fully with the Commission.

7           Sec. 3. The Commission shall make a final report of its  
8 recommendations for improvement of the revenue laws to the 1995  
9 General Assembly and may make an interim report to the 1994  
10 Session of the 1993 General Assembly.

11           Sec. 4. This resolution is effective upon ratification.

### Explanation of Proposal 25

This joint resolution simply authorizes the Legislative Research Commission to continue to study the revenue laws of this State. The resolution gives the study of the revenue laws a broad scope and permits the Commission to make an interim report to the 1994 Session of the 1993 General Assembly and a final report to the 1995 General Assembly on the results of its study of the revenue laws.





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

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

4           Whereas, the Legislative Research Commission has been authorized by  
5 the 1977, 1979, 1981, 1983, 1985, 1987, and 1989 General Assemblies to conduct a  
6 study of the revenue laws of North Carolina; and

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

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

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

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

23           Sec. 2. The Commission may call upon the Department of Revenue to  
24 cooperate with it in its study of the revenue laws. The Secretary of Revenue shall  
25 ensure that the Department's staff cooperates fully with the Commission.

1                   Sec. 3. The Commission shall make a final report of its recommendations  
2 for improvement of the revenue laws to the 1993 General Assembly and may make  
3 an interim report to the 1992 Session of the 1991 General Assembly.

4                   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

\* Resigned on August 1, 1992



APPENDIX C





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



21-DEC-92

MEMORANDUM

TO: Revenue Laws Study Committee

FROM: Myra M. Torain and Martha H. Harris

SUBJECT: Bills Recommended to the 1992 Regular 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, 1992 Regular Session. The majority of the committee's recommendations became law. Of the 16 proposals, 14 were enacted in whole or in part. Of the remaining two bills, one failed on second reading and the other one remained in committee.

Legislative Proposal 1: Enacted.

House Bill 1326, AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS, was introduced by Representative Gamble and ratified as Chapter 922 of the 1991 Session Laws.

Legislative Proposal 2: Enacted.

House Bill 1324, 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, was introduced by Representative Gamble and, after some modifications, was ratified as Chapter 930 of the 1991 Session Laws.

Legislative Proposal 3: Enacted.

House Bill 1325, AN ACT TO MAKE CONFORMING CHANGES TO THE CORPORATE INCOME TAX ON UNRELATED BUSINESS INCOME OF EXEMPT



**CORPORATIONS**, was introduced by Representative Gamble and ratified as Chapter 921 of the 1991 Session Laws.

Legislative Proposal 4: Enacted.

**House Bill 1350, AN ACT TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES RELATING TO PROPERTY TAXES ON MOTOR VEHICLES**, was introduced by Representative Kerr and, after some modifications, was ratified as Chapter 961 of the 1991 Session Laws.

Legislative Proposal 5: Enacted.

**House Bill 1321, AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES**, was introduced by Representative Gamble and, after some modifications, was ratified as Chapter 1007 of the 1991 Session Laws.

Legislative Proposal 6: Enacted.

**Senate Bill 1015, 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**, was introduced by Senator Winner and ratified as Chapter 914 of the 1991 Session Laws.

Legislative Proposal 7: Enacted.

**Senate Bill 1012, AN ACT TO REINSTATE TWO SALES TAX PROVISIONS THAT WERE INADVERTENTLY DELETED IN PRIOR LEGISLATION AND TO PROVIDE THAT COMPUTER ACCESS CHARGES ARE NOT TANGIBLE PERSONAL PROPERTY**, was introduced by Senator Winner. The part of the bill relating to computer access charges was not in the original proposal; it was added when the bill was in the House. As expanded, the bill was ratified as Chapter 949 of the 1991 Session Laws.

Legislative Proposal 8: Enacted.

**House Bill 1322, AN ACT TO INCREASE THE AMOUNT OF BEER A MINI-BREWERY CAN SELL TO CONSUMERS AT THE BREWERY AND TO MAKE CHANGES TO THE ALCOHOLIC BEVERAGE LAWS**, was introduced by Representative Gamble and, after numerous modifications relating to the alcoholic beverage laws, was ratified as Chapter 920 of the 1991 Session Laws.

Legislative Proposal 9: Enacted in part.

Senate Bill 1014, AN ACT TO REVISE THE CATEGORY OF SPECIAL MOBILE EQUIPMENT, TO ESTABLISH A UNIFORM REGISTRATION FEE FOR SPECIAL MOBILE EQUIPMENT, AND TO ALLOW SPECIAL MOBILE EQUIPMENT TO TOW CERTAIN VEHICLES, was introduced by Senator Winner, and after some modifications, was ratified as Chapter 1015 of the 1991 Session Laws. Part of the original proposal, which would have made mobile classrooms and mobile offices subject to sales tax rather than highway use tax, was not enacted.

Legislative Proposal 10: Enacted.

House Bill 1320, AN ACT TO CLARIFY THAT THE SCRAP TIRE DISPOSAL TAX DOES NOT APPLY TO NEW TIRES PLACED ON NEWLY MANUFACTURED VEHICLES, was introduced by Representative Gamble and, after the effective date was changed to July 15, 1992, was ratified as Chapter 867 of the 1991 Session Laws.

Legislative Proposal 11: Enacted.

Senate Bill 1011, AN ACT MAKING TECHNICAL AND OTHER CHANGES TO THE FUEL TAX LAWS, was introduced by Senator Winner and after two provisions were added, was ratified as Chapter 913 of the 1991 Session Laws.

Legislative Proposal 12: Failed.

Senate Bill 1013, 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, was introduced by Senator Winner and passed the Senate, but failed on second reading in the House.

Legislative Proposal 13: Enacted.

Senate Bill 1016, was introduced by Senator Winner as 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 bill was revised to instead repeal the privilege license tax on security dealers and was ratified as Chapter 965 of the 1991 Session Laws, AN ACT TO REPEAL THE PRIVILEGE LICENSE TAX ON SECURITY DEALERS, TO INCREASE THE REGISTRATION FEE FOR SECURITY SALESMEN, AND TO MAKE TECHNICAL CHANGES.

Legislative Proposal 14: Enacted.

Senate Bill 1009, AN ACT MAKING TECHNICAL AND ADMINISTRATIVE CHANGES TO THE LICENSE AND EXCISE TAX LAWS, was introduced by Senator Winner and after some modifications, was ratified as Chapter 955 of the 1991 Session Laws.

Legislative Proposal 15: Enacted.

House Bill 1323, 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, was introduced by Representative Gamble. The bill was revised to change the percentage of the tax that counties may retain from 7/10 of 1% to 2% and to provide that counties must remit tax proceeds to the State quarterly rather than monthly. The bill was ratified as Chapter 1019 of the 1991 Session Laws.

Legislative Proposal 16: Failed.

Senate Bill 1010, AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER, was introduced by Senator Winner and received a favorable report from Senate Finance. The bill was re-referred to Senate Appropriations, however, where it remained.

APPENDIX D



Request for Proposals

Title: Comparative Study of Bank Taxation in Selected States

Issue Date: October 28, 1992

Issuing Agency: North Carolina General Assembly  
Legislative Services Commission  
Revenue Laws Study Committee  
100 Legislative Office Building  
300 N. Salisbury Street  
Raleigh, NC 27611

Proposals must be submitted to the issuing agency at the above address by 5:00 p.m., November 23, 1992.

Direct Inquiries to: Martha H. Harris  
Legislative Drafting Division  
100 Legislative Office Building  
Raleigh, NC 27611  
Telephone (919) 733-6660  
Facsimile (919) 733-3113

A pre-proposal conference is scheduled for 10:00 a.m., November 10, 1992, Room 1425, State Legislative Building, 16 Jones Street, Raleigh, North Carolina. ATTENDANCE IS A REQUIRED PREREQUISITE TO OFFERING A PROPOSAL.

Anticipated key dates associated with the proposal are as follows:

RFP Mailed to Vendors ..... October 28, 1992  
Pre-proposal Conference ..... November 10, 1992  
Proposals Due ..... November 23, 1992  
Award Contract ..... November 30, 1992  
Submit Complete Study Report. January 4, 1993

I. INTRODUCTION

The Revenue Laws Study Committee is seeking a consultant to perform a study of selected issues in state taxation of corporations engaged in the banking business. The study seeks to determine whether North Carolina's tax structure that applies to banking corporations imposes a tax burden comparable to that of other states in the Southeast and other states that impose an income tax on banking corporations. The study also seeks to determine how North Carolina's income tax deduction/exclusion allowed to banking corporations for interest expenses incurred in generating tax-exempt income affects the tax burden on these corporations. For the purpose of this study, the terms "corporation engaged in the banking business" and "banking corporation" mean a financial institution as defined in section 265(b) of the Internal Revenue Code.

The study will require an analysis of the tax laws applicable to banking corporations in several states and an analysis of the fiscal impact of these laws on typical hypothetical banking corporations, as described in detail below. The consultant's report will include a nontechnical description of the methodology used to produce the fiscal analyses.

The projected deadline for completion of the study is January 4, 1993. The results of the study will be provided in writing; the consultant will also be asked to present the results of the study in person to a committee of the General Assembly and to answer questions.

## II. BACKGROUND

Representative John R. Gamble, Jr. introduced House Bill 1355 during the 1992 Session of the 1991 General Assembly. Part of the effect of House Bill 1355 would have been to eliminate a special rule that effectively excludes from state income taxation a banking corporation's interest expenses incurred in generating tax-exempt income. The bill would have modeled the state's rule regarding taxation of a financial institution's expenses allocable to tax-exempt interest on the federal rule provided in section 265(b) of the Internal Revenue Code.

House Bill 1355 was debated by the House Finance Committee and was referred to the Revenue Laws Study Committee for study and recommendations. There are a number of questions that the Revenue Laws Study Committee wants to have answered to enable it to evaluate the merits of House Bill 1355. Background materials on House Bill 1355 are available for review by appointment at the issuing agency office.

## III. PROJECT DESCRIPTION

The study will answer the following questions:

QUESTION 1. Outline and summarize the state taxes that apply to corporations engaged in the banking business in North Carolina, Florida, Georgia, South Carolina, Tennessee, Texas, and Virginia. List each state tax separately, itemizing the rate, the base, and any caps or tax preferences that reduce liability. Give citations to relevant statutes. Do not include the sales tax, but do include income taxes, share taxes, excise taxes, franchise taxes, intangibles taxes (whether state or local), and any tax specifically applicable to banks. The ad valorem tax on real property and tangible personal property should not be included. To the extent possible, state the number of banking corporations paying each tax and the total revenue derived from banking corporations under each tax for the most recent year for which data is available.

QUESTION 2. Make a comparison of the state tax burden on typical hypothetical corporations engaged in the banking business in



North Carolina, Florida, Georgia, South Carolina, Tennessee, Texas, and Virginia. Evaluate each state tax separately. Compare differences in how hypothetical small, medium, and large corporations are affected. More than one hypothetical structure within each size range, designed in consultation with the contract administrator, may be necessary to adequately demonstrate the comparative tax burdens.

QUESTION 3. Of the 50 states, list all that impose an income tax on banking corporations. Give citations to the relevant statutes. Identify those that impose a tax indirectly measured by income, including income from federal obligations. State the rate of tax. Of the states that impose an income tax, identify those that allow a deduction for (or otherwise exclude from taxation) interest expenses incurred in generating tax-exempt interest income. Describe the extent of the deduction allowed.

QUESTION 4. Compare the effective State income tax rate on book income (financial earnings) of typical hypothetical banking corporations (small, medium, and large) in North Carolina and ten of the other states that impose an income tax on banking corporations. The ten states will be selected by the contractor subject to approval of the contract administrator. Calculate and compare the effective excise tax rate on book income (financial earnings) of the same typical hypothetical banking corporations in Tennessee.

QUESTION 5. Conduct the same comparisons as in questions 2 and 4, but assuming House Bill 1355 were enacted in North Carolina, so that banking corporations could not deduct (or otherwise exclude from State income tax) interest expenses incurred in generating tax-exempt income.

QUESTION 6. Determine the impact on North Carolina income tax liability of the deduction/exclusion by banking corporations of interest expenses incurred in generating tax-exempt income. Demonstrate by mathematical formula and by example the extent to which the current law allows a banking corporation to eliminate its taxable income by investing a certain minimum percentage of its assets in tax-exempt obligations. Form a conclusion, if possible, of the extent to which the exclusion from taxation of these expenses allocable to tax-exempt income is resulting in the avoidance of income tax by banking corporations in this state or in any other state. State the basis for your conclusions. Describe any other relevant issues or conclusions raised by the study.

#### IV. VENDOR RESPONSIBILITIES AND QUALIFICATIONS

The selected consultant must plan, organize and conduct the study. Vendors submitting proposals must do the following:

(A) Work Plans - Prepare detailed work plans that describe the course of action for completing the project, explain how the project will be conducted, and elaborate upon the understanding of the project and scope of work.

(B) Nature of Services - Discuss the nature of services proposed for the project, the complexities of the project, and any problems anticipated.

(C) Organizational Chart - Prepare an organizational chart which identifies key personnel and subcontractors that would participate on this project. Include a description of assignments and scope of work for personnel, and the scope of work that would be assigned to subcontractors.

(D) Subcontractor Qualifications - Describe the qualifications of each subcontractor which the consultant intends to use and the scope of the work, the number of work hours, and the percent of total proposed work hours that will be assigned to each of them. Include resumes for each subcontractor's key personnel who will be assigned to this project.

(E) Resumes - Submit current, complete resumes for the vendor's project manager and key staff personnel. Include a description of their qualifications (especially those that may be uniquely qualified to work on this project) and a description of their position within the vendor's firm and length of employment with the firm. Key personnel identified in this proposal will be expected to remain assigned to the project for its duration. The firm/team should consist of members, with graduate level education, experience in economic and statistical analysis, and experience in studies of this type.

(F) Work Experience - Prepare a list of projects and work experience that is similar to the work described in this proposal or that the consultant believes would be relevant in evaluating its capability to perform the work. A description of the firm's (and subcontractors', if used) qualifications, background, and experience that makes the firm particularly qualified for this project is necessary.

(G) Cost Estimate - Identify the work hours and cost estimates for the work described in the request for proposal. These estimates must be supported with sufficient information to allow the issuing agency to evaluate whether the estimated level of effort and total estimated cost is reasonable. The work hours and cost estimate should be itemized with respect to the separate questions set out above.

(H) Schedule - Include an overall schedule of the proposed work from the date of the notice to proceed to the date work is completed.

(I) Office Addresses - List office addresses and total number of employees for the consultant (and any subcontractors used), and the number of professional and support staff employees located at those offices. State the length of time the offices have been in existence at the locations specified.

#### V. TERMS AND CONDITIONS OF THE RESULTING CONTRACT

Following are the terms and conditions of the contract for conducting the project. Other terms or conditions may be added later.

(A) CONTRACT PERIOD - The term of contract shall begin at its signing and shall end on or before January 4, 1993, unless extended or terminated as provided herein.

(B) TERMINATION - Upon mutual written agreement of the Legislative Services Commission and the contractor, the contract may be terminated at any time. Failure to perform by the contractor may result in termination by the Legislative Services Commission. In addition, the Legislative Services Commission reserves the right to terminate the contract at its discretion with 10 days written notice. In the event of termination, the contractor will be paid an amount commensurate with the work completed.

(C) TRANSFER OR ASSIGNMENT OF CONTRACT - The contract shall not be transferred or assigned to a third party.

(D) EQUAL OPPORTUNITY EMPLOYMENT STATEMENT - The nondiscrimination clause contained in Section 202 Executive Order 11246, amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, age or national origin, and the implementing regulations prescribed by the secretary of labor, are incorporated herein.

The program for Employment of the Handicapped (Affirmative Action) Regulations issued by the Secretary of Labor of the United States in Title 20, Part 741, Chapter VI, Subchapter "C" of the Code of Federal Regulations, pursuant to the provisions of Executive Order 11758 and Section 503 of the Federal Rehabilitation Act of 1973 are incorporated herein.

(E) INSURANCE - The contractor shall obtain, pay for, and keep in force Worker's Compensation Insurance, as required by the laws of North Carolina, covering all of the contractor's employees engaged in any work on this project.

(F) PAYMENT - Payment for all work will be made on a weekly basis as the project progresses within 30 days following receipt of invoices from the contractor and approval of progress by the Cochairs of the Revenue Laws Study Committee. Payments will be

tied to services performed in accordance with the work plan submitted.

(G) COST - The resulting contract between the Legislative Services Commission and the selected vendor will not be a time and materials type of agreement; therefore, any time and/or expense needed to complete the project successfully above those costs stated in the cost proposal must be the sole responsibility of the vendor.

## VI. INSTRUCTIONS FOR VENDORS

### (A) Proposal Requirements

Proposals must be submitted in two separate, sealed packages, one labeled "Technical Proposal" and the other "Cost Proposal". Each original must be signed and dated by an official authorized to bind the firm. Two original-signature copies are required in addition to ten extra copies. Proposals must be received at the issuing agency's office by 5:00 p.m. November 23, 1992. Vendors must submit the name, address, and telephone number of the individuals with authority to bind the firm and answer questions about the proposal.

### (B) Pre-proposal Conference

A pre-proposal conference for all potential vendors will be conducted in Room 1425 of the State Legislative Office Building at the address listed on the cover sheet of this RFP. The conference will be from 10:00 a.m. until 12 noon on November 10, 1992. Attendance at this conference is mandatory. Vendors are encouraged to be prompt and to allow time for finding suitable parking. Parking is available in the visitors section of the state parking deck on North Salisbury Street.

All questions concerning this RFP may be submitted in writing prior to the pre-proposal conference to the address indicated for inquiries on the cover sheet of this RFP. Additional questions may be submitted at the pre-proposal conference. A written summary of important questions and answers will be provided by mail after the conference to all vendors attending the pre-proposal conference.

### (C) General Conditions for Submitting Proposals

1. UNSOLICITED PROPOSAL CHANGES - Any change to a proposal that is received after the closing date of this RFP and that is not specifically solicited by the state, will be rejected.

2. COSTS FOR PROPOSAL PREPARATION - Any costs incurred by vendors in preparing or submitting offers are the vendors' sole responsibility; the state of North Carolina will not reimburse any vendor for any costs incurred prior to award.

3. ELABORATE PROPOSALS - Elaborate proposals in the form of brochures or other presentations beyond those necessary to present a complete, effective proposal are not desired.

4. ORAL EXPLANATIONS - The Legislative Services Commission will not be bound by oral explanations or instructions given at any time during the competitive process or after award.

5. REFERENCE TO OTHER DATA - Only information that is received in response to this RFP will be evaluated; reference to information previously submitted will not suffice.

6. PROPRIETARY OR OTHER "CONFIDENTIAL" INFORMATION - Any trade secrets or other data that the vendor does not wish disclosed to other than state personnel involved in the evaluation or contract administration will be kept confidential if identified as described below:

Each page shall be identified in boldface at the top and bottom as Confidential. Any section of the proposal that is to remain confidential should, in addition, be so marked in boldface on the title page of that section. Net cost information may not be deemed confidential.

7. TIME FOR ACCEPTANCE - Each proposal must state that it is a firm offer that may be accepted within a period of 180 days, although the contract is expected to be awarded prior to that time.

8. EXCEPTIONS - Any exceptions to terms, conditions, or other requirements in any part of this RFP must be clearly pointed out in a distinct section of the appropriate Cost Proposal or Technical proposal. Otherwise, the Legislative Services Commission will consider that all items offered are in strict compliance with the RFP, and the successful vendor will be responsible for compliance.

9. FORM OF PROPOSAL - Each proposal should be submitted in a form that, at the option of the Legislative Services Commission, may be incorporated verbatim into a contract.

10. ADVERTISING - In submitting their proposals, the vendors agree not to use the results therefrom as a part of any news release or commercial advertising without prior written approval of the Legislative Services Commission.

11. CONFIDENTIALITY OF PROPOSALS - In submitting their proposals, the vendors agree not to discuss or otherwise reveal their technical or cost information to any other sources, government or private, until after the award of the contract. Vendors not in compliance with this provision may be disqualified, at the option of the Legislative Services Commission from contract award. Only discussions authorized by

the Legislative Services Commission are exempt from this provision.

12. RIGHT TO SUBMIT MATERIAL - All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the vendors will become the property of the Legislative Services Commission.

13. COMPETITIVE OFFER - The signer of any proposal submitted in response to this RFP thereby certifies that their proposal has not been arrived at collusively or otherwise in violation of federal or North Carolina antitrust laws.

14. VENDORS' REPRESENTATIVE - Vendors shall submit the name, address and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

#### VII. EVALUATION PROCESS

(A) At their option, the evaluators may request oral presentations or discussions with any or all vendors to clarify or amplify the material presented in any part of the proposal. However, vendors are advised that this provision is not mandatory; therefore, all proposals should be complete and concise and reflect the most favorable terms available from the bidders. Vendors may be required to provide copies of reports and other pertinent documentation they have completed for similar projects.

(B) Upon completion of the technical evaluation, the cost proposals of those technical proposals deemed acceptable will be removed from safekeeping and opened. The cost offered will then become a matter of public record. Interested parties are cautioned, however, that these costs and their components are subject to further evaluation, and, therefore, may not be an exact indicator of a vendor's pricing position.

(C) Proposals will be evaluated according to the criteria discussed below. The award of a contract to one vendor does not mean that the other proposals lacked merit, but with all factors considered, THE BEST SELECTED PROPOSAL WAS DEEMED TO PROVIDE THE BEST COMBINATION OF TECHNICAL AND COST VALUES TO THE STATE OF NORTH CAROLINA.

(D) Vendors are cautioned that this is a Request for Proposals, not a request to contract, and the Legislative Services Commission reserves the unqualified right to reject any or all offers for any contract when such rejection is deemed to be in the best interest of the State of North Carolina.

#### VIII. EVALUATION CRITERIA

The co-chairs of the Revenue Laws Study Committee will select the vendor to whom the contract will be awarded, subject to approval of the Legislative Services Commission. The criteria for evaluation will be:

1. Understanding of the objectives of the project.
2. Plan for conducting the study.
3. Vendor's background and experience in similar work.
4. Staffing resources that will be assigned to the project.
5. Staff experience, project management procedures and techniques, vendor quality assurance reviews, and other items that will be employed to ensure the timely delivery of superior quality products and expected results.
6. Cost.

RL-33





APPENDIX E



Transcript of Comments by Steve Glickstein, at the November 24, 1992 meeting of the Revenue Laws Study Committee

Federal Tax Treatment of Banks' Interest Expenses Allocable to Tax-Exempt Income

As you mentioned, I work in the office of Chief Counsel. I'm A Staff Assistant with the Assistant Chief Counsel for Financial Institutions in the Treasury Department. The division in which I work is responsible for creating the regulations, legislative suggestions, advising our field organizations on the enforcement of the federal tax laws with respect to all sorts of financial institutions, banks, S & L's, insurance companies and regulated investment companies. I'm here this morning really, just as was said, to talk about generally how the federal tax deals with deductibility of expenses of financial institutions attributable to tax-exempt interest. I really don't have a particular point of view to advance to you in considering your own legislation, and I certainly would not want to leave here with your having the impression that I have told you that the federal law is perfect in its dealing with these issues because it certainly is not. The deductibility of these expenses for financial institutions is generally handled under Section 265 of the Code. It provides three broad rules: The first is that no deduction is allowed for interest expense that's allocable to assets that provide tax-exempt interest income. The second is that no deduction is allowed for other items of expense allocable to assets that provide other forms of tax-exempt interest. The third is that no deduction is allowed for other expenses not allocable to an asset that provides tax-exempt interest income if the expense is not an ordinary and necessary business expense. Section 265(a) provides a direct tracing rule for all taxpayers; what I mean by that is under 265(a) you'll look to the real purpose of the expense; you try and find out what the taxpayer's purpose was for incurring the expense and trace it to the asset that's producing the form of tax-exempt income. And if you can do that, then under 265(a) the entire amount of that expense is not allowed as a deduction for federal tax purposes. Section 265(b) provides a special rule for banks and other similar financial institutions that allocates all interest expense on a pro-rata basis between assets that provide tax-exempt income and all other assets and then the portion of the expense that's allocable to the tax-exempt assets is disallowed as a deduction on the federal return. There are a number of reasons, both tax and economic, that have driven the Congress to enact Section 265. From a tax standpoint, ever since the beginning of the income tax there's always been viewed a potential double benefit here.

If you have exempt interest income, that's obviously excluded from your federal tax computation and then if you have an expense incurred to produce that income, instead of that income absorbing the expense that you have incurred so that there may be either a reduction or a loss, that deduction that's incurred to carry the tax-exempt asset essentially can work as a shelter for other non-exempt income. The leverage of borrowing can produce significant effects on taxation. In 1985 the House Ways and Means Committee estimated it was possible for a bank to totally eliminate its income tax liability by investing one-third or less in tax-exempt obligations. In addition to the double tax benefit, there are potential economic distortions in subsidies that the deductions, as well as the tax exemptions, provide. Tax exemption generally permits an issuer's debt to have a lower interest rate burden because the net yield to a purchaser includes the tax benefit. In other words when a municipality issues a bond they don't have to issue it at a federal funds rate because people know that the interest they are receiving is tax exempt so that they can charge a lower rate. So to a certain extent it reduces the burden on the issue. The borrower then can go into the market place and borrow money at a cheaper rate because of the tax benefits that are available to the holder of their issue. If investors purchase excessive amounts of tax-exempt securities, the amount of capital available for investment in private enterprise can be reduced and over the years that's been one concern of Congress. And finally with respect to the problems that Congress was trying to address in the current law under Section 265, were issues involving enforceability in administering--how do you create a rule that's reasonably fair, that is, applies equally to all taxpayers, is economically sound, and is practical to administer? And as I go into some of the history, hopefully the explanation of that will be apparent.

Since the earliest days of the federal income tax, Congress created an exemption for interest on state and local obligations; this literally goes back to the first days of the income tax. The deduction of interest incurred to purchase or carry tax-exempt obligations was also prohibited at the same time. In the early 1900's the restriction was essentially a tracing rule for all taxpayers. You looked at the purpose or the use of the borrowed funds to determine whether the interest deduction was allowable in the case of interest on borrowings to purchase the tax-exempt asset. As early as the Revenue Act of 1918 the House proposed to eliminate the restriction but the Senate refused because it thought that borrowing to create tax-exempt income should be discouraged because of the double tax benefit. One proposal in 1918, I think it was for simplification purposes, was to change the tracing rule and just have an absolute rule that said that an interest deduction was not allowable to the extent that you had tax-exempt income so that interest

expense would be deductible only to the extent it exceeded your total tax-exempt interest income. In 1924 Congress considered again the question of the deductibility of interest and other items of expense associated with carrying tax-exempt assets and again refused to eliminate the rule; in '24 the concern was that there was excess investment in tax-exempt instruments.

In 1934, the House considered making the restriction tighter because the Internal Revenue Service had administratively created an exception. That exception applied only to banks and essentially said that in determining what interest expense was not going to be allowable you ignored interest paid on deposits and other types of borrowings in the ordinary course of business of the bank. The Senate however refused to agree to the change that the House was suggesting because of its potential impact on marketing the federal securities which back in the 30's were tax exempt themselves and were purchased primarily by financial institutions. The Senate's concern was that if the general rule was modified there would be a substantial disruption to the federal market for securities, not just the state and local market. Although there are many significant changes in the treatment of expenses allocable to tax-exempt obligations over the next several decades, the basic rule remained the same through early 1982 and that is, with the exception of banks, interest on debt that as a matter of fact was used to purchase or carry tax-exempt obligations is not deductible. This is a rule in earlier versions of Section 265 under the 1954 Internal Revenue Code. With respect to banks, however, their business inherently involved regular borrowing. The general rule was rarely applied to banks because of the administrative exception that the Internal Revenue Service had created in the mid 20's and it carried through through various administrative announcements right through the 70's.

In 1982 the Tax Equity and Fiscal Responsibility Act added sections 291(a)(3) and 291(e) to the Internal Revenue Code. These sections created a reduction of the preference items for banks and other financial institutions. It disallowed 15% of a bank's overall interest deductions based on the ratio of a bank's basis in tax exempt assets to its basis in all its assets. This percentage was later raised to 20%. The rule eliminated the need for tracing unless a bank could prove that the preference item was actually less by tracing. The legislative history for this statute is not very explicit. The banking industry was merely one of several industries singled out in Section 291 in order to limit tax benefits peculiar to certain industries.

Finally, in part of the Tax Reform Act of 1986, Congress changed the rules in Section 265 for banks. The legislative history cited two principle reasons for the changes: The

first, allowing financial institutions to deduct interest payments regardless of their tax-exempt holdings discriminated in favor of financial institutions at the expense of other taxpayers. The reason for this was primarily with respect to other taxpayers, it's been easier for the service, to the extent that it's easy at all, to trace the origin of the funds used to carry tax-exempt obligations. But in the case of a financial institution where there are hundreds and thousands of financial transactions occurring every day, it's very difficult for the Internal Revenue Service to do the tracing required by old Section 265. The second reason was that financial institutions could drastically reduce their tax liability under the old rules. In '86 as part of the process of enacting the legislation, Congress was obviously interested in various tradeoffs. The tradeoffs involved revenue losses as well as increasing revenue through changes such as this.

The new rule under Section 265 provides for proportional disallowance of all interest attributable to tax exempt obligations acquired after August 7, 1986. That date was just selected as part of the process of enacting the Tax Reform Act of 1986. The computation is similar to the older Section 291 limitation from 1982. A taxpayer computes the ratio of its average-adjusted basis in tax exempt obligations to its average-adjusted basis for all its assets and then multiplies that times all its interest expense. The result is the amount of interest expense excluded from the institution's deductions. Section 291 was modified to apply only to tax-exempt obligations acquired before August 7, 1986. The legislative history explains that the reason for applying the proportional disallowance rule only to financial institutions is the difficulty of tracing and the near impossibility of ascribing purpose in accepting particular deposits. Congress believed that the change in the rules would place financial institutions on approximately equal footing with other taxpayers. One significant limitation that was placed on the application of the new rules, it does not apply to designated tax-exempt bonds of qualified small issuers, that is, state political subdivisions that don't anticipate issuing more than \$10 Million of tax-exempt obligations during the year. The reason for the federal small issuer exemption was concern for the potential effect on smaller localities that depend upon local financial institutions to buy tax-exempt obligations that finance bonafide governmental projects.

As far as the current rules -- the administrative problems in the federal area, first, banks and other institutions that accept deposits from the public are subject to this limitation. The statute does not apply to other entities that could function as de facto banks. Perhaps in some circumstances insurance companies and brokerage houses

may perform similar functions to a bank but under the explicit language of the statute are not clearly covered.

As far as the securities that are affected, whether a tax-exempt obligation is acquired after August 7, 1986 is determined with respect to federal income tax holding period rules that are not part of Section 265. In some cases the taxpayer is required to use the holding period of a transferor or its predecessor from whom the taxpayer acquires tax-exempt obligations. This may occur for example in acquisition of tax-exempt obligations as part of a tax free corporate reorganization. Determining whether a particular bond issue is grandfathered may not be easy for either taxpayers or the IRS, but for both of us it's important. If the terms of an old tax exempt obligation are materially modified, under Section 1001 of the Internal Revenue Code the old obligation is deemed to have been exchanged for a new obligation and the acquisition date is the date of the deemed exchange, not the date the obligations were first purchased. The Supreme Court recently handed down a decision this past year, Cottage Savings vs. The Commissioner, which has created some turmoil in the area of 1001 in the determination of what is or is not a deemed sale and this has created some anxiety amongst financial institutions as well as others. This is the effect of Section 265.

I would like to just briefly explain how you allocate interest expense to tax-exempt income because in considering any legislation you have to figure out mechanically how to do this, how the banks can do it on a practical level and how anyone who reviews the returns can determine whether it's correct. The computation of the average adjusted basis of tax-exempt obligations during the tax year must generally be computed at least monthly. The average adjusted basis for all assets of a taxpayer must generally be computed at least quarterly. A taxpayer has the option of making the computations more frequently, but the taxpayer can't use the calculation on a less frequent basis than it used during the prior year without the approval of the appropriate district director. If a manipulation of assets distorts any otherwise permissible computation, a district director may require a different computation method. The adjusted basis of the assets is based upon an institution's tax books, not its financial books and records. Under certain circumstances the taxpayer is permitted to use an estimate for the adjusted basis of all its assets for the first three quarters of a taxable year. This method assumes that any changes that occur during a taxable year occur pro-ratably whether they do or not.

Let's talk about some problem areas. For the federal statute, one problem for us is how do you determine the small issue of the prospective state and local issues? The types of aggregation rules we will use to determine what

issues of various governmental subdivisions will be considered together. Under the federal rule, in order to meet a small issuer exception involving \$10 Million of bonds you have to have a reasonable expectation or anticipation during the year as to what exactly you are going to issue and determining whether or not your expectation was reasonable at the beginning of the year is perhaps a little problem for issuers as well as the Service. What is an obligation is a difficult problem for us. If you have a draw down obligation that permits someone during the course of construction to take the proceeds of the bonds periodically instead of in a lump sum and that breaks tax years, for federal purposes the issue is, do you consider the entire amount issued in one year or do you consider only the amount drawn down in the year, the amount of the security for purposes of determining the \$10 Million consumption?

Another question is how do you deal with inter-company transactions where a parent corporation borrows funds that are contributed to a subsidiary in order to purchase tax-exempt bonds. So a bank sets up a subsidiary, borrows money, then makes a capital contribution to the subsidiary, and the subsidiary purchases the tax-exempt bonds, and then dividends up the tax-exempt income to the parent. Those dividends for the most part would not be taxable to the parent under the federal tax system. Section 265 explicitly does not have any language to deal with the situation. It doesn't have a related party rule where you give your borrowed funds to someone else to buy the tax-exempt obligations, and it doesn't have any rule dealing with subsidiaries. Nonetheless, we have felt we have the authority to deal with this and have issued private letter rulings on this matter and have aggregated the tax-exempt obligations purchased by a subsidiary corporation with the assets and the borrowings of the parent corporation.

How do you apply the August 7, 1986 effective date to various hybrid financial transactions especially in the last ten years banks as well as other financial intermediaries have become very creative in their forms of doing business, hedging their risks and their overall operations. And the problem is how do you recognize what is debt or an expense allocated to a particular tax-exempt instrument. That is a very serious problem for us. Related to that is a question of allocation between principal and interest. Before the 80's, under federal rules, taxpayers were very free to allocate payments under a debt instrument between principal and interest, it was possible perhaps to allocate all early payments to principal and all late payments to interest or all early payments to interest and all late payments to principal. Well if you are trying to trace or allocate interest expense to tax exempt obligations, the question is how you determine the taxpayer's allocation of principal and interest on its borrowings to carry its assets. To a greater



extent this has been solved in the federal law with the implementation of the original issue discount rules which, for the most part, ignore taxpayers' allocations between amounts that they may call (in the debt instrument or by contract) interest or principal, and objectively compute the annual interest associated with an instrument. But as with many solutions under the federal tax law it's far from perfect and one reason it's far from perfect is because of the doubt about exactly how those rules apply to various hybrid financial instruments.

Another problem deals with the adjusted basis calculation under Section 265. Banks regularly adjust their basis in the assets whether or not they dispose of them because they take charge-offs for bad debts. They have several problems to deal with in that respect: one is the Internal Revenue Service and the other would be the bank regulators. The bank regulators like to see them charge off a certain amount of bad debts under their rules and we had separate rules until recently - very separate rules. Now the two sets of rules are going to be a little more consistent. It may well be that there is a tension in the normal operation of a bank in trying to figure out what is the appropriate charge-off for an asset. It's far from a scientific certainty as to how you do it, but on the one hand if the regulators force you to charge off your assets in one direction, under 265 you may not have a proper interest allocation that would give you the right deduction for your items of expense. And it could go either way; you could get either excess deduction or an insufficient deduction based upon the real economics of how the institution operates. From the standpoint of the federal rule, I guess in the current parlance in Washington, we would use a rough justice approach--that 265 in its current pro-rata allocation rule makes it relatively easy at least for a financial institution to figure out how to allocate the amount of disallowed interest and expense.

Another potential problem involves just overall timing of the interest income and expense. The rules with respect to when you take an item into income under the federal tax law and when you take a deduction for an item under the federal tax law are not necessarily the same although virtually all banks, not every bank, is on the accrual method of accounting. The rules are not necessarily clear in all cases as to when you take deductions or include things in income. So as a result of either through inadvertence or for planning purposes it may be possible to have an effect on the allocation under 265 just based upon the normal tax planning that goes into the timing of inclusion of items of income and expense on a tax return.

So essentially what it comes down to here is that in '86 the Congress has adopted what's really essentially a rule of

convenience, I mean the bottom line I think for the federal rule is that by '86 after decades and decades of trying to deal with the issue everyone just decided that one, with respect to financial institutions, they didn't think it was reasonable to totally ignore their interest expense in looking at their tax-exempt income. And two, the tracing was really an impossibility; the service as a practical matter determined that back in the 20's, and Congress knew that back in the 20's, considered over decades changing the law and didn't until they finally came up with pro-rata allocation in '86. We have not issued many regulations or written guidance on it. There are some controversies ongoing with respect to 265 and financial institutions. Some of these will be resolved, I'm sure, by further rulings and regulations. Others will eventually see their way into the Courts, but by and large it's not been an area since enactment that's had an overwhelming amount of controversy associated with it. And I think the reason I can say that is just from the standpoint of a tax administrator, there are many other problems that both the Congress and ordinary taxpayers are putting pressure on us to provide additional written guidance on. And 265 has been an area where the pressure for guidelines has been less severe than in others. And we've been able at this point to deal with it on a case-by-case basis without overriding concerns that either we're unfairly taxing financial institutions in our current interpretations of the black letter rule of the statute or that the taxpayers are in a position to steamroller the federal tax collections system through the method they are using to file their returns.

#### QUESTIONS POSED BY COMMITTEE MEMBERS:

Representative Gamble: Our proposed bill says that essentially North Carolina follows the federal Internal Revenue Code and its approach to taxation, exemptions, etc. It's my understanding that the only place we don't follow the Code is in taxing the banks in tax-free securities and the income from those. My bill proposes that we follow the federal code the same as we do in all of our other statutory requirements. In essence, tell us what that will do as banks take deposits, pay interest on them, use those deposits to buy interest-free securities, how that would affect the revenues of the state as it does the federal government. It is my understanding they can take the income from the instruments tax free but they can't deduct the interest they pay on the deposits to purchase them. Is my interpretation correct?

Mr. Glickstein: Generally, that's right under the allocation rules.

Representative Gamble: The bill that I have proposed says that we will do it just the way the feds do it. It really simplifies it all because we have had in the last few years three Department of Revenues' and attorney general's opinions of our statutes. We think the statutes are ambiguous and that if we just say that we will do the way the feds do in the taxing of financial institutions in their acquisition of income from tax-free bonds. So what I wanted to bring Mr. Glickstein here for today, ladies and gentlemen, is to make clear that the proposal is that we do banks the way the feds do. That just simplifies everything because we are doing the way the feds are doing in all our tax structure. The only exception is the way we tax banks and this says to simplify it we will go by the same guidelines that the feds provide in the taxation of banks and, in particular, in their handling of their tax-free securities. And they have simplified it by just saying that you can't deduct the interest you pay on that deposit to acquire tax-free interest. Is that a simple enough and accurate interpretation of what you do?

Mr. Glickstein: Well, not exactly. There's nothing simple in the federal tax law. First, the statute makes some assumptions and the assumptions are that they will just assume that a proportion of your assets have been acquired through borrowing money, not just in capital contributions, and they will allocate the basis of those assets and the expenses related to them based upon the adjusted tax basis-- not necessarily either the fair market value or the financial book value. Only a portion of the interest expense will be disallowed, and it's based upon that computation.

Representative Kerr: What does that usually run, is that 1% of 80% or 100% - how do you get a feel for this proportionate disallowance of interest deductions?

Mr. Glickstein: I don't have a feel for the numbers, sir. That really depends upon the operation of an institution but to mention just a couple of things based upon your comments and that involves the effect it has on net revenue: In '86 there were really two pools of thought about it. The legislative history indicated that the changes to 265 and its effect on financial institutions would produce a net positive result with respect to collection of revenue, that is, tax collections would go up. There was a contrary argument to that and that was prior to the enactment, these types of investments may be tax-favored, after the enactment they may not be as tax-favored. And as a result banks would just change their behavior. They would change the way they structured their transactions, how much tax-exempt obligations they would borrow, and therefore, the net effect of the change in statute may not in fact be to raise federal tax revenue. The net effect might not be there. I don't know of any studies since 1986 which reveal to us what the

real effect has been on collection of revenue from banks. I don't know which argument wins in that.

Senator Staton: This was enacted in 1986 and you say that there still is not any real decision, factual basis, saying whether it's increased or decreased revenues. Is that a fair assessment of what you said or is that overstated?

Mr. Glickstein: I'm not aware of any. I don't know whether if either the Treasury Department or some of the committees of Congress as part of their ongoing activities in tax reform have considered that, but at least I don't see any committee reports or published treasury reports that provide any information on this.

Senator Staton: You would not be prepared to say that to this committee today that the enactment of this legislation in '86 has substantially assisted in increasing revenue?

Mr. Glickstein: That's right. I don't know the answer to that question. That was Congress's intention but I don't know what the answer to that is.

Senator Staton: But in arriving at that point, you give the committee any initial study for the enactment of the tax reform acts, did it consider what the imposition of this law or the implementation of this law would do to other sources of revenue. You know, banks that provide money so that municipalities may create facilities that enhance the business life of the community, county, state and city, was any study made of what the implications might be on other types of revenue other than what would be covered under this?

Mr. Glickstein: To a certain extent, yes, and the reason I can say that is twofold. One is in the statute itself, Section 265, there was the small issuer exception carved out and that was done at the request of small municipalities and also the banks that do business with them. And it was generally recognized at that time that it could have a severe impact on a small municipality if it usually places its tax anticipation notice with a single institution in the town or county, and the imposition of the new Section 265 would have an effect on how that bank would do business. So Congress carved out this exception for the small issuer in the federal rule. In addition, at the same time in 1986 Congress enacted comprehensive revisions to the tax laws that deal with tax-exempt bonds. By 1986 Congress was very concerned with problems they were seeing in the tax-exempt bond area. Primarily this involved issuance of bonds on behalf of third parties for private activity. Section 265 wasn't just an isolated endeavor. Congress was looking not only at the problem related to banks. In looking at the 1986 Act, it needs to be considered in light of all of the changes that Congress made in the area of tax-exempt financing in 1986:

which was to restrict it considerably over the rules that existed prior to '86.

Representative Gamble: What was the net effect?

Mr. Glickstein: I don't know. In revenue terms, I don't know that I have the information. The purpose of the changes was, in fact, to increase the collection of tax revenue to eliminate what were perceived to be certain abuses with respect to tax-exempt financing of facilities and operations of private parties who are engaged in normal business practices. To that extent, the changes have not just a revenue purpose behind it but also an economic purpose because businesses that were able to persuade a municipality to provide the tax-exempt financing have lower operating costs than other businesses that have to go into the general market place to borrow or to obtain capital. So Congress had a dual purpose there which was not just revenue raising but also to have a level, economic playing field for all participants in business.

Senator Staton: We enacted in 1989 the provision in our revenue code to follow the federal code. I take it that one of the reasons that our chairman introduced this legislation, HB 1355, was to follow the code again and I guess at the same time to increase our revenues. Now, my question is this: How many states have enacted legislation which would follow the '86 legislation?

Mr. Glickstein: I don't know the answer to that, sir.

Senator Staton: Do you know whether any have or not?

Mr. Glickstein: No, I really don't, sir. If I could mention just a couple of comments with respect to your question. There are some substantial differences I think you need to be aware of between the federal rules and your rules when you are considering what to do. One is of course that in the federal area, federal obligations are no longer tax exempt and I guess that's one problem that you all face, in addition to the effect on state and local obligations. And banks historically have held federal obligations for things that have nothing whatever to do with the tax exempt nature of the obligations. And the problem that we've had in the federal law in these rules that developed over decades is trying to figure out a fair way to do it. So instead, I think, eventually everybody's just sort of thrown up their hands and used this allocation on the 265, but for our purposes it's less important just because many years ago the decision was made that federal obligations are taxable under federal income tax.

The other question is what overall effect it has on business operations. With respect to the federal laws, it's

a little difficult for a bank to shift its operations, especially with respect to holding tax-exempt obligations, outside of the reach of the federal tax law. I'm not sure how your rules would apply, but if in fact the banks would shift their operations with respect to tax-exempt obligations out of state you all will then have to determine how any rule that you would have that would follow the federal rule would affect operations that are occurring outside your state borders. A problem we have under federal rules, which I am not sure whether or not you would have under your state law, although I did take a quick look at it and I think it may be there, under the federal rules not all tax which looks like tax-exempt income is affected by Section 265 and probably the class that is the biggest example of this is the deduction that corporations receive for dividends from other corporations under Section 246, commonly referred to as the DRD. Technically, when a corporation receives a dividend from another corporation, that dividend is not tax-exempt income; it's included in its income. And then under another section of the code (246) they get a deduction for it. The effect may be the same as if the income is tax exempt because of the off-setting deduction, but Section 265 doesn't apply to deductions, only to exempt income. And the question then becomes in your own rules in state law whether this problem similarly exists and whether you believe it's necessary to address it either to overcome this problem that may or may not exist in the federal rules or just to deal with the question of whether any change that you make will have an effect on transferring business that is subject to your tax here in North Carolina to another state where it may be beyond your reach.

Representative Gamble: You are talking about Holding Companies?

Mr. Glickstein: Yes sir. And, of course, in banks that's very common usage.

Senator Winner: Given that federal obligations must be tax free in North Carolina and all states because of the Constitution and given the fact that banks tend to hold a lot of federal obligations, at least regular banks do, I'm not sure about thrifts, wouldn't such a bill, if we adopted it in North Carolina, forgetting the interstate problems, likely have much more of a revenue effect on banks proportionately in the state than it would in the federal government?

Mr. Glickstein: I would certainly think that's true. Just based upon my experience, I would think that's true.

Senator Winner: With regards to the point that you just made, let me see if I understand by putting it in a different way what you just said by giving an example: If, assuming that our corporate law stays the same which is tracked on the

federal corporate law pretty much ever since I've known about it, if we adopted this rule a bank could avoid it, or at least an interstate type bank which we seem to have a lot of them in this state, by setting up a subsidiary somewhere else that didn't have this rule having that subsidiary own all the tax-exempt bonds or obligations and then feeding it to the North Carolina corporation as a dividend which would be tax exempt under the current rules. Is that what you've just said?

Mr. Glickstein: That's right. Well, the effect would be a tax-exempt dividend certainly under the federal law, I believe. And I believe under your own rules as well.

Senator Winner: So, therefore those that were interstate banks could circumvent this bill by doing that?

Mr. Glickstein: Without being completely familiar with your state law, I'm a little hesitant to give you an opinion on North Carolina law.

Senator Winner: If we went to the federal guidelines they could still do that?

Mr. Glickstein: If you went to the federal guidelines and the reach of your tax law was as broad as the reach of the federal law, I would suggest to you that setting up a subsidiary to hold the tax-exempt obligations would not free the holding company group from the potential application of 265, so that would limit their interest deduction.

Representative Gamble: So the state could make application to what they did in the holding company outside the state? They could make claim to that?

Mr. Glickstein: That is something I think is really a question more of state law than it is federal law.

Representative Gamble: What if we followed the federal guideline though, the same guideline?

Mr. Glickstein: I'm just not sure because this is an area that the Supreme Court in many other situations has been addressing over the last several years with respect to the permissible reach in state tax laws outside the boundary of the states themselves.

Representative Luebke: I served with Representative Gamble on the House Finance Committee and we had the discussion of this in our Spring session and we agreed as a Committee that we didn't have enough answers. Representative Gamble brought it forward at the request of the House Finance Committee here for our discussion. Several things you raised had not been introduced in our discussion and I find them very intriguing.

One is this issue of essentially equal footing or what I think we in North Carolina call level playing field. I think that what I hear you saying is that one of the reasons why the law was changed in 1986 as you read the intent of Congress - were you on Staff at that time?

Mr. Glickstein: No, I was not, although I was working for the Chief Counsel's office at that time.

Representative Luebke: So you were monitoring the legislation?

Mr. Glickstein: Yes, sir.

Representative Luebke: One of the things that I see is that the way the federal law was written before 1986 and the way ours is still written, or at least being interpreted, is that it is in a bank's interest, perhaps, because of the way tax laws are, to invest excessively in tax-exempt bonds and therefore to some extent to deprive the private sector of capital that it might be wishing to have. In other words, it is one of the unintended consequences of the tax law that we actually keep capital from getting to the private sector. Is that correct?

Mr. Glickstein: That is one of the concerns that Congress had in the Revenue Act of 1924. That concern was raised when it was suggested that the tracing rules be changed and it was also specifically discussed in the legislative history in 1986, if my recollection serves me correctly, that that was a concern especially with respect to the federal rules - driving investment into tax-exempt obligations instead of investment in normal business activities.

Representative Luebke: Then my question, with respect to the legislative lobbying that was going on in 1986, it would seem to me that it's clear that since this was a major change putting other corporations on an equal footing with banks, that they would have been enthusiastic about it, is that accurate?

Mr. Glickstein: I think that's fairly correct. Although if you'll look at the legislative history, this was one of the things that did not have other corporate taxpayers as upset. The comments in the legislative history with respect to the changes in 265 are really not very extensive. Several industry associations made some comments and a small number of individual institutions made some comments, very brief comments, on 265. The bulk of their comments involved other aspects of the changes to tax-exempt issuances as well as general corporate law.

Representative Luebke: So, is it fair to say that regarding 265, that you didn't get a whole lot of lobbying from the



banking industry vs. the steel industry or the automobile industry- they didn't come in saying "do this so we have a level playing field." It was more Congressional staffers and Congress persons and Senators.

Mr. Glickstein: That is my sense from reading the legislative history and from my own personal experience.

Representative Luebke: And then, finally, Senator Winner, you indicated you understood 246 vs. 265, but I need it a second time. That was the one where the tax-free dividends are included in income but then deducted, so 265 did not apply to them. Can you explain that again? And, in particular, is there any way that we can keep that from being a problem for us if we were to pass Representative Gamble's bill and it became law? Would this 246, 265 relationship get us in trouble?

Mr. Glickstein: First, let me give you the solution before I forget it. The solution may be very simple and could potentially be very simple for the federal statute as well and that is creating some sort of related party rule. Under the Internal Revenue Code there is a Section 267(b) that defines various related parties and their corporations, inter-related ownerships, and things of that sort that are used to apply various parts of the federal tax law not only to the primary taxpayer but also to the related parties. Perhaps 265 would be easier to deal with in the federal arena if there were some overt incorporation of the related party rules of 267. Now to get back to your problem of 246.

Representative Luebke: You may not need to do those, you have given me the solution. What you are saying is that there is a way out?

Mr. Glickstein: Except the 246 problem is a little different; it's not just a related party rule necessarily there because 265 deals with two things: expenses related to exempt income that is not interest income. With respect to expenses related to exempt interest income, 265 has a rule that says that you are not permitted to take those deductions at all. Now in order for that rule to apply you have to have exempt income. Let's talk about the federal scheme with respect to dividends. Technically, dividends (intercorporate dividends or even if they are not part of the same holding company group - one corporation owns shares of another's stock) technically, those dividends are not tax exempt. Under the federal rules that dividend that a corporation receives from another corporation is includable in income. Then under section 246, you receive an off-setting deduction either 100% or 70%, whatever it is, depending upon the ownership that you have so that the problem you have with applying 265 to what looks like tax-exempt dividend income is is that up front the dividend income is not tax exempt. So.....

there's a substantial argument to make that in that case 265 doesn't apply. So the related party rule that I was talking to is really separate from the problem that you have with the rule of 246 in dividends from one corporation to another because that is includable in income and therefore not subject to the 265 rule.

And that's separate and apart from the rule dealing with tax-exempt interest which is under a separate section, 265(a), and still has the tracing rule. And then you have 265(b) which is the pro-rata allocation rule. One thing we do in the federal statute is we test first for tracing with respect to a financial institution. So if you can actually find that there was borrowing specifically for purposes of generating exempt income then you knock out the deduction for that interest specifically and then you take that out of the calculation when you do your pro-rata allocation. But there again, if you have the interest income being generated in the subsidiary and then dividend it out. If you respect the corporate relationship, and the dividend that's coming across is not from a regulated investment company, so it has the character of a dividend and not the character of interest. Then you've switched the character and the rule doesn't appear to apply because the dividends are included in income. We think we have a way on the federal statute of interpreting Congress's intent and the overall purpose of the statute to overcome, that even without a black letter rule, we can solve this problem. You may want to consider whether you would like to avoid any doubt with respect to that on any rule that you enact if you do enact a new rule.

Representative Justus: Assuming Dr. Gamble's Bill 1355 should pass in its current order, (I sat on the bank board for several years and we were not in business to lose money, and if something of this type occurred we would look for a way to replace that loss of tax-exempt income) where do you think a bank board might look to recover it? I think we mentioned \$60 Million in a previous meeting with Dr. Gamble because we certainly would look for an area to recover that money.

Mr. Glickstein: That's difficult for me to say. You're probably in a better position to guess than I am since you have been involved with a bank. My guess would be several ways to recover the effect on their bottom line economic income: One is to purchase less federal securities. I would assume that they are holding many more federal securities in dollar face amounts than they are just local tax-exempt issues and it would be easier for them just to substitute something with the higher yield, go into the market place-- perhaps in corporate bonds or something else. That has to obviously be balanced by the risk associated with it. Another way perhaps is to use some sort of hybrid financial product that economically functions like tax-exempt debt or

tax-exempt borrowing but at least in the present day is not classified for federal tax purposes as debt. And if you can successfully structure a transaction with a creative hybrid product that way then the expense associated with your transaction with that product would not be considered an interest expense. So that then wouldn't be applied to the pro-rata allocation rule and then it would put the revenue people, both the federal people and your state people, in the position of having to find that transaction and trace it through the myriad financial transactions of the institution to the tax-exempt debt that its allocated to. So there are several ways to attempt to deal with it and depending upon how good we are and your state people are, we may very well discover and reclassify the transaction as a debt transaction instead of something else and apply the limitations, but it does become more difficult for us as tax administrators if that occurs.

Senator Kerr: How much has Congress appropriated to bail out the S & Ls' to the resolution trust, roughly ?

Mr. Glickstein: I really don't know the exact number, sir, roughly I guess somewhere between \$30 and \$50 Billion if my recollection is correct.

Representative Kerr: Did anybody think about this in 1986 when you all were having all these hearings about what this Act was going to do to the real estate and the S & L's and the banks? You were up there and heard a lot of this testimony, did anybody raise that flag?

Mr. Glickstein: No one raised the flag that it was going to, in and of itself, cause banks or S & L's to fail because of the increased tax burden. I think part of the reason for that may have been that to a great extent, certainly by '87 or '88 when S & L's were having so many problems, and it became apparent that they probably had excess deductions from bad debt charge-offs and were less concerned about things being includable in income. In fact in my experience back in '86, '87 and '88, what the S & L's were trying to do was to convert as much as they could into income, more regulatory income without any regard to the income tax, because they were trying to keep themselves afloat and the only way to do that was to show the regulators that they were having income. So I think there was much less concern in '86, '87, and '88 about this income suddenly showing up on their returns, at least from the experience that I've had with the institutions that I've dealt with.

Representative Kerr: Do you think that Act was positive for the country--when history is written about what's happened to this country, do you think the Tax Reform Act of '86 will be considered as a positive influence?

Senator Winner inquired of Representative Kerr: Are you talking about just this issue with the '86 Act or the whole '86 Act?

Representative Gamble: We're supposed to be talking about taxing the banks here.

Representative Kerr: I just wanted to know his comments on the whole Act. He helped write that Act; I just wanted to know what he thought of the Act, looking back on it.

Mr. Glickstein: I really wasn't on any of the committees that wrote the bill so I wouldn't claim authorship for it. I don't know that I can presume to tell you whether overall there's been a net benefit to the country, I think it may be too early to say. As a tax administrator from the standpoint of tax administration, (and I look at that from two directions, one is from my standpoint in trying to see that there's compliance with the law and the other from the standpoint of taxpayers who have the burden of filing returns), I think there was some improvement and certainly there was some detriment. Overall, I don't know how it balances out but I think something like the 265 rule, in particular, as a tax administrator, it's much easier to administer fairly than the tracing rule.

Under the new rule, at least with respect to this issue, it's very easy to be sure that taxpayers are treated exactly the same. And with the old rule that wasn't the case, so as a tax administrator it was more difficult. The new rule may not be economically perfect for sure. In some cases it may allocate too much credit to the interest expense and in some cases not enough. I guess in the current environment the current Deputy Secretary Treasurer for tax policy has often suggested that what we need in the tax laws to simplify them, are just rules of rough justice: that overall for all taxpayers, perhaps industry-wide, reached generally a fair result with the recognition that sometimes the Treasury will lose money, sometimes taxpayers will lose money, but overall having a rule that's simple to administer will in the end provide less grief for both of us because we'll have to use less resources in the government to monitor it and taxpayers perhaps will have to hire less accountants and lawyers in order to figure out how to properly file their returns. So I think for the taxpayer who is trying to do what's right all of these rules are probably much more vexatious for them, compared to somebody who's trying to game the system. Somebody who wants to fool around with trying to minimize their tax by going through all the grey areas doesn't concern themselves as much with problems of complexity as taxpayers who are actually generally concerned with complying with the laws. I think this rule helps taxpayers who are generally trying to comply with the rules as they should be.

#####

APPENDIX F



## HOLDING COMPANIES AND EXPENSE ATTRIBUTION TO NONTAXABLE INCOME

The holding company issue revolves around whether or not North Carolina corporate law requires the attribution of expenses to nontaxable income.

A holding company is defined in North Carolina's franchise tax laws. It must receive at least 80% of its gross income from corporations in which they own at least 50% of the voting stock. A holding company is basically a parent-subsiary relationship.

This issue came under scrutiny after a May 28, 1992, administrative ruling by then Secretary of Revenue Betsy Justus. A bank holding company protested a state auditor's assessment of additional corporate income tax. The auditor had found the additional tax liability after reviewing the taxpayer's returns for 1987 through 1989.

The additional tax was due to an increase in the state income tax base achieved by "attributing expenses" to the corporation's dividend income from its subsidiaries. The dividend income was now required to be reduced by the amount of expenses associated with it before being deducted from taxable income. This increased the state tax base, and therefore increased the amount of corporate tax owed.

The Secretary's ruling went against the findings of the auditor and in the favor of the taxpayer. The taxpayer was permitted to deduct both the dividend income from its subsidiaries and the expenses associated with producing that income.

We're talking specifically about holding companies because Section 2 of House Bill 1355 would have the impact of reversing that ruling. Section 2 affects holding companies in two ways:

1. It would require the expenses of dividend income to be subtracted before taking the deduction.
2. It would require non-interest expenses of interest income from Federal, state and local obligations to be subtracted from that income before excluding it from taxable income.

I'll speak to what other states do on the issue of expenses associated with tax-exempt income first. From my research to date, the majority require the expenses of tax-exempt income to be deducted from that income before the income is subtracted from the tax base. There are 45 states that impose a corporate income tax. Five of these states, California, Utah, Minnesota, Montana, and Florida, levy a non-discriminatory franchise tax instead of an income tax. These states do not have tax-exempt income from government obligations because these states tax all interest income, Federal, state, and local. Of the 40 states, 28 states require all expenses associated with tax-exempt income be subtracted from that income before it can be excluded from the tax base.

Most states follow the principle that if income is tax-exempt, the expenses associated with it should not be. However, most states also make a distinction between tax-exempt income and tax deductible income. Concerning deductible dividends from subsidiary corporations, the majority of states told me they did allow an expense deduction for this dividend income. Of the total 45 states, only nine states clearly said they do not allow this expense deduction.

The general allowance of an expense deduction for deductible dividends may be impacted by the fact the many states permit the filing of consolidated returns. This filing status is permitted for Federal tax purposes, but is not allowable in all states. North Carolina does not have a consolidated filing status. A consolidated return treats all the members of a parent-subsiary group of corporations as one taxable entity. The expenses of dividend income are treated as ordinary and necessary business expenses, and are therefore deductible. The parent company must control at least 80% of the stock and voting power of its subsidiaries, and this 80% rule applies to subsidiaries who own stock in other companies to qualify as members of a consolidated filing group.

Consolidated returns are permitted in 30 of the 45 states that levy a state corporate tax. Most of these states allow the same corporations who have filed consolidated returns for Federal tax purposes to file a consolidated return at the state level.



APPENDIX G



## Privilege License Taxes and Principles of Taxation

Privilege license taxes do not conform to any generally accepted principles or philosophies of taxation. Previous studies by tax study committees also have found this to be true:

1956 Tax Study Commission: "The system of license taxation is a hodge podge method of extracting relatively small total amounts of revenue through a very inequitable and irritating hierarchy of levies by three different governmental units, the various levies being on a multitude of various bases in many instances having no relationship to the total amount of business done."

1966 Tax Study Commission: "The licenses levied under Schedule B show no pattern or logic."

1968 Tax Study Commission. "This Commission is of the opinion that privilege license taxation as used in North Carolina is an undesirable method of raising revenue. The amount of revenue produced is not great enough to justify the higher cost of collections and the harassment of compliance...The Commission found many reasons for eliminating most privilege license taxes and found little to commend them. The Commission concluded that no business or occupation licenses should be levied as revenue measures."

There is no generally accepted principle of taxation that calls for professionals and businesses to be taxed in compensation for the "privilege" of doing business in the state.

The purpose of taxation is to distribute the costs of government services equitably. That can be done according to the benefits principle of tax fairness or the ability to pay principle of tax fairness. Privilege license taxes conform to neither of these principles. If license taxes are intended to compensate for the benefits derived from doing business in North Carolina, why do they fall only on professionals and certain kinds of businesses, not on all workers and all firms that might benefit from the "privilege" of working or doing business in the state. License taxes on professionals and most businesses are levied as a flat amount. Not only do they bear no relation to income, but the taxes on professionals are highly regressive, equivalent to a head tax on certain persons who earn their living in a profession.

The better way to tax individuals and businesses for the privileges they enjoy is through general taxes, charges, and fees designed to achieve equity according to the

benefits and ability to pay principles--that is, through personal and corporate income taxes, property taxes, and other state and local revenue measures intended to apply to all persons or firms.

We can also evaluate privilege license taxes according to generally accepted criteria for taxes. Commonly accepted criteria are fairness, responsiveness to growth, stability, neutrality, administrative costs.

As noted, privilege license taxes are not related to either the benefits or ability to pay principles of fairness. In addition, there are major inequities because of substantial disparities in taxation of individuals and businesses. For example, different types of firms are taxed differently. Meatpacking plants are taxed an average of \$93 per license, while ice cream manufacturers are taxed an average of \$1,621. Other types of manufacturers are not taxed at all. Other examples: the average revenue per license is \$708 for loan agencies, \$279 for employment agencies, and \$67 for automobile dealers. In addition, firms pay different amounts depending on where they do business, and how many jurisdictions they operate in.

Privilege license tax revenue is not very responsive to growth. The revenues are fairly stable, however, and in general they have a neutral effect on economic decisions. As legislative staff members have demonstrated, the cost of collecting these taxes is very high, compared with collection costs of other types of taxes.

What approach should be taken with regard to these taxes? Should the state eliminate them, as previous study commissions have recommended, or at least repeal certain ones? There are several reasons why the general class of license taxes should be maintained, even if many of the individual taxes were repealed. Many local governments rely on privilege license taxes, even though it is at best a minor revenue source (however, local authority could be maintained if state license taxes were repealed). Also, privilege license taxation is a convenient form of taxation that might meet specific needs. Three examples will illustrate.

The gross receipts tax on entertainment is the equivalent of a retail sales tax on entertainment, and it serves in lieu of a retail sales tax on entertainment. Why should food and clothing be taxed under the retail sales tax, and spending on entertainment not taxed (incidentally, why should entertainment spending be taxed at three percent under the gross receipts tax, while food and clothing are taxed at six percent)? Second, when the General Assembly chose to impose a tax on video machines during the 1980s, Schedule B provided a convenient form for the tax--it did not have to invent a special kind of tax for this purpose. Third, the privilege license tax on those who solicit people to work in other states was apparently a requirement of a multi-state arrangement for regulation of this activity, and Schedule B again provided a convenient form of taxation for this purpose.

Some people contend that privilege license taxes are needed as part of state or local regulation of professions or businesses. However, it is difficult to find evidence that

privilege license taxation serves a regulatory purpose. Licenses cannot be withheld from individuals or firms that otherwise meet requirements of the law. The courts have restricted the use of regulatory provisions in local license taxes. As previous study commissions have recommended, license taxes that are associated with regulation should be in the part of the statutes that authorize regulation, not in Schedule B.

Short of repealing all privilege license taxes, the main need is to rationalize and simplify the existing taxes. Taxes on certain types of firms, such as manufacturers (only two types are now taxed), or on professionals might be repealed. Or taxes on different types of firms might be combined into one tax, such as a "merchant's license." The committee's proposal 19 is one approach, though it has the drawback that, apparently, it would extend license taxation to all manufacturers. Local units should be allowed to retain the option of using flat rate taxes, rather than being forced to use the gross receipts form of the tax.

The following principles regarding privilege license taxation are presented for discussion and consideration.

1. The best way to tax for the "privilege" of working or doing business in the state is through existing broad-based taxes and charges related to ability to pay or benefits--that is, through the individual and corporate income taxes, property taxes, and benefit-related taxes and charges, and other revenue measures. There is no need for additional taxes on "privilege."

2. In general, privilege license taxation should not be regarded as a way to raise substantial amounts of revenue for the state, but instead should be regarded as a special category of taxes levied for various specific reasons. For most license taxes to raise substantial amounts of revenue, the tax rates would have to be increased substantially, and this increase would exacerbate the problems that now exist with these taxes.

3. Distinctions among types of professionals and businesses should be minimized in order to reduce inequities. That is, a single privilege license tax should apply to most most types of businesses, if they are to be taxed at all.

4. The best approach for achieving equity among businesses is to limit taxes to a reasonable, nominal amount applied uniformly, rather than trying to achieve equity according to size or profitability.

5. If privilege license taxes are needed for regulatory purposes, they should be authorized as regulatory taxes or fees in the statutes that authorize regulation, not in Schedule B.

6. Authority of local units to levy gross receipts privilege license taxes should be restricted as to rate or amount so that they do not become additional retail sales taxes.



APPENDIX H





SPEAKERS AT COMMITTEE MEETINGS

<u>SPEAKER</u>	<u>SUBJECT OF PRESENTATION</u>
Allen H. Jones, Bureau of Alcohol, Tobacco & Firearms U. S. Treasury Department	Tax Secrecy Changes
Bill Rustin N. C. Retail Merchants Assoc.	Merchants Discount
Dwight Pearson N. C. Department of Public Instruction	Driver Education Vehicles
Bart McLean N. C. Department of Revenue	Property Tax Appeals
Jim Blackburn N. C. Association of County Commissioners	Property Tax Appeals Registration of Appeal Representatives
Terry Rowland Cabarrus County	Tax Assessors' Concerns (Motor Vehicles Dealers' Licenses)
Bill Lane Dept. of Motor Vehicles	Motor Vehicles Dealers' Licenses
Charles Collins N. C. Department of Revenue	Sales Tax Licenses Abuse
Charles D. Liner Institute of Government	State Privilege Licenses and Tax Policy Principles
Ellis Hankins League of Municipalities	Local Privilege License Taxes as a Municipal Revenue Source
Steve Glickstein Internal Revenue Service	Federal Income Tax Treatment of Banks' Expenses
Robert Beck Department of Revenue	Motor Fuels Tax
Ms. Harriet Tharrington Department of Revenue	Special Investigations- Penalty for Nontaxpaid Fuel
Bradley M. Buie Office of State Controller	Debt Coordination and Collection
Joseph D. Joyner, Jr. Moore and Van Allen	Business Investment Tax Credit for Partnerships
Ernest Pearson Department of Commerce	Income Tax on Foreign Nation Corporations



APPENDIX I





## North Carolina Department of Revenue

J. Ward Purrington, Secretary

James G. Martin, Governor

December 21, 1992

### MEMORANDUM

TO: Martha Harris, Staff Attorney  
Legislative Bill Drafting Division

FROM: William H. Baker, Jr., Director *WHB*  
Corporate Income and Franchise Tax Division

SUBJECT: Proposed Draft of Bill Titled "Update I.R.C. Reference"

We have reviewed the proposed draft of the bill titled "Update I.R.C. Reference" and we believe the bill adequately addresses the recommended changes.

We are unaware of any I.R.C. changes relevant to corporate income tax which would require any changes in the proposed draft.

WHBJr:jm



## ATTACHMENT

### Updating References to the Internal Revenue Code

By updating our references to the Internal Revenue Code to January 1, 1993, we will adopt the changes contained in the Unemployment Compensation Amendments of 1992, which was signed by the President on July 3, 1992. The following changes affect the computation of North Carolina taxable income.

#### Phaseout of Personal Exemptions

For tax years beginning on or after January 1, 1991, taxpayers with adjusted gross incomes exceeding certain base amounts were required to reduce (phaseout) their personal exemptions. This provision was scheduled to expire on December 31, 1995.

Under the 1992 Act, the termination of the phaseout of personal exemptions was extended to December 31, 1996.

#### Rollover of Nonperiodic Pension Distributions

Under federal law prior to the 1992 Act, partial distributions from tax-qualified pension plans (sec. 401(a)), qualified annuity plans (sec. 403(a)), and tax-sheltered annuities (sec. 403(b)) could not be rolled over tax free to another plan or annuity or to an individual retirement arrangement and were included in gross income in the year paid or distributed unless the partial distribution equaled at least fifty percent of the balance in the plan and the distribution was payable due to the employee's death, separation from service, or disability.

Under the 1992 Act, any part of the taxable portion of a distribution from a qualified pension or annuity plan or a tax-sheltered annuity other than a minimum required distribution can be rolled over tax-free unless the distribution is one of a series of substantially equal payments made (1) over the life of the participant, or (2) over a specified period of at least ten years.

#### Withholding Tax Deposits

The Internal Revenue Service has adopted new regulations ( 31.6302-0 through 31.6302-3) simplifying its deposit rules for withheld income taxes. The new system creates two principal categories of taxpayers, monthly filers and semi-weekly filers. The Internal Revenue Service will instruct taxpayers by November of each year whether they are monthly or semi-weekly filers based on the total amount of employment taxes reported over the twelve-month period beginning on July 1 and ending on June 30. An employer who reported \$50,000 or less during the twelve-month period is classified as a monthly filer for the next calendar year. An employer reporting more than \$50,000 over that twelve-month period must file semi-weekly and must deposit the tax withheld on Wednesdays and Fridays for the next year. All new employers will be classified as monthly depositors. The regulations are effective for payments beginning January 1, 1993, but taxpayers are not required to adopt the new system until January 1, 1994.

By updating our references to the Code, we will follow the new federal regulations with respect to semi-weekly payment requirements for employers who withhold an average of at least \$2,000 of State income taxes from wages each month (G. S. 105-163.6(d)).

(Note: To keep the requirements to pay tax withheld the same for State and federal purposes until our references to the Code were updated, we adopted a rule under the rule-making authority granted to the Secretary in G. S. 105-262 to incorporate the new federal payment requirements.)

#### Other Changes

Taxpayers with adjusted gross incomes exceeding certain base amounts must reduce their personal exemptions and certain of their itemized nonbusiness deductions. The base amounts increase each year for inflation. For 1993, the base amounts are as follows:

Personal Exemption - base amount before reduction increased to -

- a. \$162,700 from \$157,900 for married filing jointly or surviving spouse
- b. \$135,600 from \$131,550 for head of household
- c. \$108,450 from \$105,250 for single
- d. \$ 81,350 from \$ 78,950 for married filing separately

Itemized Deductions - base amount before reduction increased to -

- a. \$108,450 from \$105,250 for all but married filing separately
- b. \$ 54,225 from \$ 52,625 for married filing separately

The amount of personal exemption, standard deduction, and additional standard deduction for being age 65 or older or blind have also been increased for inflation. These changes have no net effect on North Carolina taxable income because the taxpayer is required to add those inflation adjustments to federal taxable income in arriving at North Carolina taxable income.



APPENDIX J





Department of the Treasury  
Internal Revenue Service  
Catalog Number 46849F

Publication 901  
(Rev. Nov. 1991)

# U.S. Tax Treaties

## Contents

Important Changes.....	1
Important Reminder.....	1
Introduction.....	1
Tax Exemptions Provided by Treaties.....	2
Personal Services Income.....	2
Professors, Teachers, and Researchers .....	8
Students and Apprentices.....	10
Wages and Pensions Paid by a Foreign Government.....	15
Explanation of Tables.....	17
Table 1 - Tax Rates for 1991 on Income Other Than Personal Service Income.....	18
Table 2 - Exempt Personal Services Income .....	20
Table 3 - List of Tax Treaties.....	29

## Important Changes

**New income tax treaties.** The United States has exchanged instruments of ratification for new income tax treaties with Finland, Germany, India, Indonesia, Spain, and Tunisia. Some of the provisions of these treaties are summarized in this publication.

**Finland.** The provisions for withholding U.S. tax at source are effective for amounts paid or credited after January 31, 1991. For other taxes, the provisions are effective for tax years beginning after 1990.

**Germany.** The provisions for withholding U.S. tax at source are generally effective for amounts paid or credited after 1989. For other taxes, the provisions are generally effective for tax years beginning after 1989. **However**, for the area that was the German Democratic Republic, the treaty provisions are effective January 1, 1991.

For the first year the new U.S.—German treaty is in effect, an election may be made to have the old treaty apply if it results in greater relief from tax.

**India.** The provisions for withholding U.S. tax at source are effective for amounts paid or credited after 1990. For other U.S. taxes, the treaty is effective for tax years beginning after 1990.

**Indonesia.** The U.S. withholding provisions on interest, dividends, and royalties are effective for amounts paid or credited after January 31, 1991. For other taxes, the provisions are effective for tax years beginning after 1989.

**Spain.** The provisions on interest, dividends, and royalties are effective for amounts paid or credited after 1990. The provisions for all other income are effective for tax years beginning after 1990.

**Tunisia.** The provisions for withholding tax at source are effective for amounts paid or credited after 1990. For other taxes, the treaty is effective for tax years ending after December 30, 1990.

## Important Reminder

**Disclosure of a treaty-based position that reduces your tax.** If you take the position that any U.S. tax is overruled or otherwise reduced by a U.S. treaty (a treaty-based position), you generally must disclose that position on your affected return.

## Introduction

The United States (U.S.) has income tax treaties (conventions) with a number of foreign countries. Under these treaties, residents of foreign countries are taxed at a reduced rate, or are exempt from U.S. income taxes on certain items of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and specific items of income.

This publication will tell you whether a tax treaty between the United States and a particular country offers a reduced rate of, or possibly a complete exemption from, U.S. income tax for residents of that particular country.

Tables in the back of this publication show the countries that have income tax treaties with the United States, the tax rates on different kinds of income, and the kinds of income that are exempt from tax.

**You should use this publication only for quick reference. It is not a complete guide to all provisions of every income tax treaty.** You can get complete information about treaty provisions from the taxing authority in the country from which you receive income or from the treaty itself. The text of the U.S.—Canada Treaty can be found in Publication 597, *Information on the United States—Canada Income Tax Treaty*. The text of some of the other treaties may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (also see the explanation of Table 3, at the back of this publication). Or, if you have specific questions about a treaty, you are welcome to get this information from most Internal Revenue Service offices or from the Internal Revenue Service, Attn: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

If the treaty with your country covers the payment of a particular kind of income, you **must** follow the provisions of that treaty. However, if the treaty does not cover a particular kind of income, or if there is no treaty between your country and the United States, you must pay tax on the income in the same way and at the same rates shown in the instructions for Form 1040NR. Also see Publication 519, *U.S. Tax Guide for Aliens*.

Tax treaties reduce the U.S. taxes of residents of foreign countries. They **do not reduce** the U.S. taxes of U.S. citizens or residents. U.S. citizens and residents are subject to U.S. income tax on their worldwide income. But, because treaty provisions generally are reciprocal (apply to both treaty countries), a U.S. citizen or resident who receives income from a treaty country may refer to the tables in this publication to see if a tax treaty might affect the tax to be paid to that foreign country.

Foreign taxing authorities sometimes require certification from the U.S. Government that an applicant filed an income tax return as a U.S. citizen or resident, as part of the proof of entitlement to the treaty benefits. For information on this, see Publication 686, *Certification for Reduced Tax Rates in Tax Treaty Countries*.

Sometimes the provisions in tax treaties conflict with the provisions in the U.S. tax law. When this happens, you should generally follow the provision with the later effective date. There are, however, exceptions to this general rule. If you need more information, contact the Internal Revenue Service, Attn: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, D.C. 20024.

Many of the individual states of the United States tax the income of their residents. Therefore, you should consult the tax authorities of the state in which you live to find out if that state taxes the income of individuals and, if so, whether the tax applies to any of your income.

Pub. 901



**Disclosure of a treaty-based position that reduces your tax.** If you take the position that any U.S. tax is overruled or otherwise reduced by a U.S. treaty (a treaty-based position), you generally must disclose that position on your return. If you are not required to file a return because of your treaty-based position, you must file a return anyway to report your position. This disclosure requirement does not apply to a reduced rate of withholding tax on noneffectively connected income, such as dividends, interest, rents or royalties, or to a reduced rate of tax on pay received for services performed as an employee, including pensions, annuities, and social security. For more information, get Publication 519, *U.S. Tax Guide for Aliens*.

If you fail to disclose a treaty-based position that reduces your U.S. tax, you may have to pay a \$1,000 penalty. Corporations are subject to a \$10,000 penalty for each failure.

**Free publications and forms.** If you need information on a subject not covered in this publication, you may check our other free publications. To order publications and forms, write the IRS Forms Distribution Center for your area as shown in the income tax package.

## Tax Exemptions Provided by Treaties

In addition to the tables in the back of this publication, this publication contains discussions of the exemptions from tax and certain other effects of the tax treaties on the following types of income:

- 1) Certain pay for personal services performed as a nonresident alien,
- 2) Pay as a foreign professor or teacher who teaches or performs research in the United States for a limited time,
- 3) Amounts received from abroad for maintenance and studies by a foreign student or apprentice who is here for study or experience, and
- 4) Wages, salaries, and pensions received as a nonresident alien paid by a foreign government.

## Personal Services Income

Pay for certain personal services performed in the United States is exempt from U.S. income tax if you are a **resident** (not necessarily a citizen) of one of the countries discussed below, if you are in the United States for a limited number of days in the tax year (in the case of Finland, Indonesia, New Zealand, and Spain in any consecutive 12-month period), and if you meet certain other conditions. For this purpose, the word "day" means a day during any part of which you are physically present in the United States.

**Terms defined.** Several terms appear in many of the discussions that follow. The exact meanings of the terms are determined by the particular tax treaty under discussion; thus, the meanings can vary from treaty to treaty. The definitions that follow are, therefore, general definitions that may not give the exact meaning intended by a particular treaty.

The terms **fixed base** and **permanent establishment** generally mean a fixed place of business, such as an office, a factory, a warehouse, or a mining site, through which an enterprise carries on its business.

The term **borne** by generally means having ultimate financial accounting responsibility for or providing the monetary resources for an expenditure or payment, even if another entity in

another location actually made the expenditure or payment.

### Australia

Income that residents of Australia receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not in the United States for more than 183 days during the tax year, and
- 2) Do not have a fixed base regularly available to them in the United States for the purpose of performing the services.

If they have a fixed base available in the United States, they are taxed on the income attributable to the fixed base.

Pay that residents of Australia receive for labor or personal services performed in the United States as employees (dependent personal services), including services as a director of a company, is exempt from U.S. income tax if:

- 1) The residents are in the United States for no more than 183 days during the tax year,
- 2) The pay is paid by or on behalf of an employer or company that is not a resident of the United States, and
- 3) The pay is not deductible in determining the taxable income of the trade or business of the employer (or company) in the United States.

These exemptions do not apply to public entertainers (such as theater, motion picture, radio, or television entertainers, musicians and athletes) from Australia who earn more than \$10,000 in gross receipts, including reimbursed expenses, from their entertainment activities in the United States during the tax year.

### Austria

Income that residents of Austria receive for labor or personal services (including practicing liberal professions and performing services as a director) performed in the United States is exempt from U.S. income tax if they are temporarily in the United States for no more than 183 days during the tax year and the income is not more than \$3,000.

Income, regardless of amount, received by residents of Austria who are temporarily in the United States for no more than 183 days during the tax year is also exempt from U.S. income tax if it is received for labor or personal services performed as an employee of, or under contract with, a natural person who is a resident of Austria or an Austrian corporation, and if that person or corporation bears the burden of the compensation.

### Barbados

Income that residents of Barbados receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not in the United States for more than 89 days during the tax year,
- 2) Earn net income for independent services provided to U.S. residents that is not more than \$5,000 (there is no dollar limit if the contractors are not U.S. residents), and
- 3) Do not have a regular base available in the United States for performing the services.

If they have a regular base available in the United States but otherwise meet the conditions for exemption, they are taxed only on the income attributable to the regular base.

Income that residents of Barbados receive for personal services performed in the United States as employees (dependent personal services) is

exempt from U.S. tax if the residents meet four requirements:

- 1) They are not in the United States for more than 183 days during the calendar year,
- 2) The income earned in the calendar year in the United States is not more than \$5,000,
- 3) Their income is paid by or for an employer who is not a U.S. resident, and
- 4) The income is not borne by a permanent establishment or regular base of the employer in the United States.

Income of a Barbados resident from employment as a member of the regular complement of a ship or aircraft operated in international traffic is exempt from U.S. tax.

These exemptions do not apply to Barbados resident public entertainers (such as theater, motion picture, radio, or television artists, musicians, or athletes) who receive gross receipts of more than \$250 per day or \$4,000 in the tax year, not including reimbursed expenses, from their entertainment activities in the United States. However, the exemptions do apply regardless of these limits on gross receipts if the entertainer's visit to the United States is substantially supported by Barbados public funds or if the entertainer's services are provided to a nonprofit organization.

### Belgium

Income that residents of Belgium receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are present in the United States less than 183 days during the tax year, and
- 2) Do not maintain a fixed base in the United States for a period or periods that total more than 182 days during the tax year.

If they do not meet condition (2), they are taxed on the income attributed to the base.

The exemption for independent personal services does not apply to individuals who are public entertainers (theater, motion picture, or television artists, musicians, or athletes), if they are in the United States for more than 90 days during the tax year or if their pay for services as public entertainers is more than \$3,000.

Income that residents of Belgium receive for labor or personal services performed in the United States as employees (dependent personal services), including services as an officer of a corporation, is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are present in the United States less than 183 days during the tax year,
- 2) They are employees of a resident of Belgium or of a permanent establishment in Belgium, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Income for services performed by an individual as an employee aboard a ship or an aircraft registered in Belgium and operated by a resident of Belgium in international traffic is exempt from U.S. tax if the individual is a member of the regular complement of the ship or aircraft.

These exemptions do not apply to fees received by a resident of Belgium for services performed as a director of a U.S. corporation if the fees are treated as a distribution of profits and cannot be taken as a deduction by the corporation.

### Canada

Income that residents of Canada receive for personal services as independent contractors or self-employed individuals (independent personal services) that they perform during the tax year in the United States (except as public entertainers) is

exempt from U.S. tax regardless of length of presence in the United States or amount of the income, provided they do not have a fixed base regularly available to them in the United States for performing the services. If they have a fixed base available in the United States, they are taxed on the income attributable to the fixed base.

Income that residents of Canada receive for personal services performed as employees (dependent personal services) in the United States (except as public entertainers) is exempt from U.S. tax regardless of amount if:

- 1) The residents are present in the United States for no more than 183 days during the calendar year, and
- 2) The income is not borne by a U.S. resident employer or by a permanent establishment or fixed base of an employer in the United States.

If the Canadian resident is present in the United States for more than 183 days or the income is borne by a U.S. resident, permanent establishment, or fixed base, the income from dependent personal services is exempt from U.S. tax if it is not more than \$10,000 for the year.

These exemptions do not apply to public entertainers (such as theater, motion picture, radio, or television artists, musicians, or athletes) from Canada who derive more than \$15,000 in gross receipts, including reimbursed expenses, from their entertainment activities in the United States during the calendar year. However, the exemptions do apply, regardless of this \$15,000 limit, to athletes participating in team sports in leagues with regularly scheduled games in both Canada and the United States.

Pay received by a resident of Canada for work regularly done in more than one country on a ship, aircraft, motor vehicle, or train operated by a Canadian resident is exempt from U.S. tax.

For more information, see Publication 597, *Information on the United States—Canada Income Tax Treaty*.

### China, People's Republic of

Income that residents of the People's Republic of China receive for personal services as independent contractors or self-employed individuals (independent personal services) that they perform during the tax year in the United States (except as athletes or public entertainers) is exempt from U.S. income tax if the residents:

- 1) Are present in the United States for no more than 183 days in the calendar year, or
- 2) Do not have a fixed base regularly available in the United States for performing the services.

If they have a fixed base available in the United States, they are taxable on the income attributable to the fixed base.

Pay received by residents of the People's Republic of China for services performed as employees (dependent personal services) in the United States (except as athletes or public entertainers) is exempt from U.S. tax if:

- 1) The residents are not present in the United States for more than 183 days in the calendar year,
- 2) The pay is paid by or for an employer who is not a U.S. resident, and
- 3) The pay is not borne by a permanent establishment or fixed base that the employer has in the United States.

These exemptions do not apply to directors' fees for service on the board of directors of a U.S. corporation, nor, generally, to income received as a public entertainer (such as a theater, motion picture, radio, or television artist, musician, or athlete). However, income of athletes or public entertainers from China participating in a cultural exchange program agreed upon by the U.S. and Chinese governments is exempt from U.S. tax.

### Cyprus

Income that residents of Cyprus receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not present in the United States for more than 182 days in the tax year, and
- 2) Do not have a fixed base regularly available to them in the United States for performing the services.

If they have a fixed base available in the United States, they are taxable on the income attributable to the fixed base.

Pay received by residents of Cyprus from services performed as employees (dependent personal services), including services as an officer of a corporation, is exempt from U.S. income tax if:

- 1) The residents are in the United States for less than 183 days during the tax year,
- 2) The pay is paid by or for an employer who is not a U.S. resident, and
- 3) The pay is not borne by a permanent establishment, fixed base, or trade or business that the employer has in the United States.

Pay received by a Cyprus resident for performing personal services as a member of the regular complement of a ship or aircraft operated in international traffic by a resident of Cyprus is exempt from U.S. tax.

These exemptions do not apply to Cyprus resident public entertainers (theater, motion picture, radio, or television artists, musicians, or athletes) who receive gross receipts of more than \$500 per day or \$5,000 for the tax year, not including reimbursed expenses, from their entertainment activities in the United States.

Directors' fees received by residents of Cyprus for service on the board of directors of a U.S. corporation are exempt from U.S. income tax to the extent of a reasonable fixed amount payable to all directors for each day of attendance at directors' meetings held in the United States.

### Denmark

Income that residents of Denmark receive for labor or personal services (including practicing liberal professions) performed in the United States is exempt from U.S. income tax if they are temporarily in the United States for no more than 90 days during the tax year and their pay is not more than \$3,000.

Income for labor or personal services that residents of Denmark perform as employees of, or under contract with, a resident, corporation, or other entity of Denmark is exempt from U.S. income tax if they are in the United States for no more than 180 days during the tax year.

### Egypt

Income that residents of Egypt receive for performing personal services as independent contractors or as self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if they are not in the United States for more than 89 days during the tax year.

Income that residents of Egypt receive for labor or personal services performed in the United States as employees (dependent personal services), including income for services performed by an officer of a corporation or company, is exempt from U.S. income tax if the residents meet four requirements:

- 1) They are not in the United States for more than 89 days during the tax year,
- 2) They are employees of a resident of, or a permanent establishment in, Egypt,

- 3) Their income is not borne by a permanent establishment that the employer has in the United States, and
- 4) Their income is subject to Egyptian tax.

Pay received by a resident of Egypt who is a member of the regular complement of a ship or an aircraft operated in international traffic by a resident of Egypt is exempt.

These exemptions do not apply to Egyptian resident public entertainers (theater, motion picture, radio, or television artists, musicians, or athletes), who earn income for services as public entertainers (both independent and dependent personal services) if the gross amount of the income is more than \$400 for each day they are in the United States performing the services.

### Finland

**Tax years beginning after 1990.** Income that residents of Finland receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if they do not have a fixed base regularly available to them in the United States for performing the services. If they have a fixed base available in the United States, they are taxed on the income attributable to the fixed base.

Income that residents of Finland receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for no more than 183 days during any 12-month period,
- 2) Their income is paid by, or on behalf of, an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment, fixed base, or trade or business that the employer has in the United States.

Income received for performing personal services as a member of the regular complement of a ship or aircraft operated in international traffic by a resident of Finland is exempt from U.S. tax.

These exemptions do not apply to income residents of Finland receive as public entertainers or sportsmen if the gross income, including reimbursed expenses, is more than \$20,000 for their personal activities in the United States during the calendar year.

**Tax years beginning before 1991.** Income that residents of Finland receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if they are in the United States for no more than 183 days during the tax year.

Income that residents of Finland receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for no more than 183 days during the tax year,
- 2) Their income is paid by or on behalf of an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Income received by an individual for personal services aboard a ship or an aircraft registered in Finland and operated by a resident of Finland will not be taxed in the United States as long as the services are performed by the individual as a member of the regular complement of the ship or aircraft.

## France

Income that residents of France receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents meet two requirements:

- 1) They are in the United States for no more than 183 days during the tax year, and
- 2) They do not maintain a fixed base in the United States for more than 183 days during the tax year.

Income that residents of France receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for no more than 183 days during the tax year,
- 2) Their income is paid by or on behalf of an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Income for services performed by a resident of France as a member of the regular complement of a ship or an aircraft operated in international traffic is exempt from tax in the United States.

These exemptions do not apply to public entertainers (such as theater, motion picture, radio, or television artists, musicians, or athletes) from France who earn more than \$10,000 in gross receipts, including reimbursed expenses, from their entertainment activities in the United States during the tax year.

## Germany, Federal Republic of

**Tax years beginning after 1989 (effective January 1, 1991, for the area that was the German Democratic Republic).** Income that residents of the Federal Republic of Germany receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States is exempt from U.S. income tax if the income is not attributable to a fixed base regularly available in the United States.

Income that residents of the Federal Republic of Germany receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. tax if the residents meet three requirements:

- 1) They are present in the United States for not more than 183 days during the calendar year,
- 2) The income is paid by, or on behalf of, an employer who is not a resident of the United States, and
- 3) The income is not borne by a permanent establishment or a fixed base that the employer has in the United States.

Pay received by a resident of the Federal Republic of Germany for services performed as a member of the regular complement of a ship or aircraft operated in international traffic is exempt from U.S. tax.

These exemptions do not apply to directors' fees and other similar payments received by a resident of the Federal Republic of Germany for services performed in the United States as a member of the board of directors of a company resident in the United States.

These exemptions do not apply to income residents of the Federal Republic of Germany receive as public entertainers (such as theater, motion picture, radio or television artists, or musicians) or athletes if their gross receipts, including reimbursed expenses are more than \$20,000 during the calendar year. Regardless of these limits, income of German entertainers or athletes is exempt from U.S. tax if their visit to the United

States is substantially supported by public funds of the Federal Republic of Germany, its political subdivisions, or local authorities.

**Tax years beginning before 1990.** Income that residents of the Federal Republic of Germany receive for labor or personal services (including practicing liberal professions and performing services as directors) performed in the United States is exempt from U.S. income tax if they are in the United States for no more than 183 days during the tax year. The labor or personal services must be performed as an employee of, or under contract with, a natural person resident in the Federal Republic or a German company that bears the pay, and the pay may not be borne by a permanent establishment that the resident or company has in the United States.

## Greece

Income that residents of Greece receive for labor or personal services (including practicing liberal and artistic professions) is exempt from U.S. income tax if they are in the United States for no more than 183 days during the tax year and the pay is not more than \$10,000. The pay, regardless of amount, is exempt from U.S. income tax if it is for labor or personal services performed as employees of, or under contract with, a resident of Greece or a Greek corporation or other entity of Greece, and if the residents are in the United States for no more than 183 days during the tax year.

## Hungary

Income that residents of Hungary receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. tax if the residents:

- 1) Are not in the United States for more than 183 days during the tax year, and
- 2) Do not have a fixed base regularly available in the United States.

If they have a fixed base available in the United States, they are taxed on the income attributable to the fixed base.

Income that residents of Hungary receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for no more than 183 days during the tax year,
- 2) Their income is paid by or on behalf of an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment or a fixed base that the employer has in the United States.

Pay received by members of the regular complement of a ship or aircraft operated by a resident of Hungary in international traffic is also exempt.

## Iceland

Income that residents of Iceland receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not present in the United States for more than 182 days during the tax year, and
- 2) Do not maintain a fixed base in the United States for a period or periods totaling more than 182 days during the tax year.

If they do not meet condition (2), they are taxed on the income that is attributable to the fixed base.

This exemption does not apply to residents of Iceland who are public entertainers (theater,

motion picture, or television artists, musicians, or athletes) if they are in the United States for more than 90 days during the tax year or their pay for services as public entertainers is more than \$100 per day.

Income that residents of Iceland receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the employees meet three requirements:

- 1) They are in the United States for no more than 182 days during the tax year,
- 2) They are employees of a resident of Iceland or of a permanent establishment of a resident of a state other than Iceland if the permanent establishment is located in Iceland, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Income for services performed by an individual aboard a ship or an aircraft operated by a resident of Iceland in international traffic or in fishing on the high seas is exempt from U.S. tax if the individual is a member of the regular complement of the ship or aircraft.

## India

Income that residents of India receive for performing personal services in the United States during the tax year as independent contractors or self-employed individuals (independent personal services) is exempt from U.S. income tax if the residents:

- 1) Are present in the United States for no more than 89 days during the tax year, and
- 2) Do not have a fixed base regularly available to them in the United States for performing the services.

If they have a fixed base available, they are taxed only on income attributable to the fixed base.

Income that residents of India receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are present in the United States for no more than 183 days during the tax year,
- 2) The income is paid by, or on behalf of, an employer who is not a resident of the United States, and
- 3) The income is not borne by a permanent establishment, fixed base, or trade or business the employer has in the United States.

Pay received by a resident of India for services performed as an employee aboard a ship or aircraft operated by an Indian enterprise in international traffic is exempt from U.S. tax.

These exemptions do not apply to income residents of India receive as public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes if their net income is more than \$1,500 during the tax year for their entertainment activities in the United States. Regardless of this limit, the income of Indian entertainers and athletes is exempt from U.S. tax if their visit to the United States is wholly or substantially supported from the public funds of the Indian Government, its political subdivisions, or local authorities.

## Indonesia

Income that residents of Indonesia receive for performing personal services as individual contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are present in the United States for no more than 119 days during any consecutive 12-month period, and



- 2) Do not have a fixed base regularly available to them in the United States for performing the services.

If they have a fixed base available, they are taxed only on the income attributable to the fixed base.

Income that residents of Indonesia receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are present in the United States no more than 119 days during any consecutive 12-month period,
- 2) The income is paid by, or on behalf of, an employer who is not a resident of the United States, and
- 3) The income is not borne or reimbursed by a permanent establishment the employer has in the United States.

Pay received by an individual for services performed as an employee aboard a ship or aircraft operated by an Indonesian resident in international traffic is exempt from U.S. tax if the individual is a member of the regular complement of the ship or aircraft.

These exemptions do not apply to income residents of Indonesia receive as public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes if their gross receipts, including reimbursed expenses, are more than \$2,000 during any consecutive 12-month period. Regardless of these limits, income of Indonesian entertainers and athletes is exempt from U.S. tax if their visit to the United States is substantially supported or sponsored by the Indonesian Government and the Indonesian competent authority certifies that the entertainers or athletes qualify for this exemption.

### Ireland

Income that residents of Ireland receive for personal services (including professional services) performed during the tax year in the United States for or on behalf of a person resident in Ireland is exempt from U.S. income tax if the residents are not present in the United States for more than 183 days during that tax year.

### Italy

Income that residents of Italy receive for performing personal services in the United States during the tax year as independent contractors or self-employed individuals (independent personal services) is exempt from U.S. income tax if the residents:

- 1) Are not present in the United States for more than 183 days in the tax year, and
- 2) Do not have a fixed base regularly available to them in the United States for performing the services.

If they have a fixed base available, they are taxed only on the income attributable to the fixed base.

Income that residents of Italy receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if:

- 1) The residents are present in the United States for not more than 183 days during the tax year,
- 2) The income is paid by or for an employer who is not a U.S. resident, and
- 3) The income is not borne by a permanent establishment or fixed base that the employer has in the United States.

Pay received by a resident of Italy from employment regularly exercised aboard a ship or aircraft operated by an Italian enterprise in international traffic is exempt from U.S. tax.

These exemptions do not apply to income residents of Italy receive as public entertainers

(such as theater, motion picture, radio, or television artists, musicians, or athletes) if they are present in the United States for more than 90 days during the tax year or their gross receipts, including reimbursed expenses, are more than \$12,000 during the tax year for their entertainment activities in the United States.

### Jamaica

Income that residents of Jamaica receive for the performance of personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not in the United States for more than 89 days during the tax year,
- 2) Do not have a fixed base regularly available to them in the United States for performing their services, and
- 3) Earn net income for those services that is not more than \$5,000 during the tax year if the income is from a U.S. contractor.

If they have a fixed base available in the United States, they are taxed only on the income that is attributable to the fixed base. There is no dollar limit for condition (3) if the contractor is from a country other than the United States.

Income that residents of Jamaica receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet four requirements:

- 1) They are not in the United States for more than 183 days during the tax year,
- 2) Their income is paid by or for an employer who is not a resident of the United States,
- 3) Their income is not borne by a permanent establishment or a fixed base that the employer has in the United States, and
- 4) Their net income received for the services is not more than \$5,000 during the tax year.

Pay received by a resident of Jamaica as a member of the regular complement of a ship or an aircraft operated in international traffic by a Jamaican enterprise is exempt.

These exemptions do not apply to income that residents of Jamaica receive for performing services (both independent and dependent personal services) in the United States as entertainers, such as theater, motion picture, radio, or television artists, musicians, or athletes, if the gross receipts (excluding reimbursements for expenses) from the services are more than \$400 a day or \$5,000 for the tax year.

Directors' fees received by residents of Jamaica for services performed in the United States as members of boards of directors of U.S. corporations are exempt from U.S. tax if the fees (excluding reimbursed expenses) are not more than \$400 per day for each day the directors are present in the United States to perform the services.

### Japan

Income that residents of Japan receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not present in the United States for more than 183 days during the tax year, and
- 2) Do not maintain a fixed base in the United States for more than 183 days during the tax year.

If they do not meet condition (2), they are taxed on only the income attributable to the fixed base.

This exemption does not apply to residents of Japan who are public entertainers (theater, motion picture, or television artists, musicians, or athletes)

if they are in the United States for more than 90 days during the tax year or their pay (excluding reimbursed travel expenses) for services as public entertainers is more than \$3,000 during the tax year.

Income that residents of Japan receive for labor or personal services performed in the United States as employees (dependent personal services), including pay received by an officer or a member of the board of directors of a corporation, is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for not more than 183 days during the tax year,
- 2) They are employees of a resident of Japan or of a permanent establishment of a resident of a state *other than Japan* if the permanent establishment is located in Japan, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

However, the exemption does not apply in certain cases in which the employee owns stock of the employer or is a member of the employer's board of directors.

Pay received by a resident of Japan who is a member of the regular complement of a ship or aircraft operated in international traffic by a resident of Japan is exempt.

### Korea, Republic of

Income that residents of the Republic of Korea receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. tax if the residents:

- 1) Are not in the United States for more than 182 days during the tax year,
- 2) Earn income for those services that is not more than \$3,000 during the tax year, and
- 3) Do not maintain a fixed base in the United States for more than 182 days during the tax year.

If they maintain a fixed base in the United States for more than 182 days, they are taxed on the income attributable to the fixed base.

Income that residents of Korea receive for labor or personal services performed in the United States as employees (dependent personal services), including pay for services performed as an officer of a corporation, is exempt from U.S. tax if the residents meet four requirements:

- 1) They are not in the United States for more than 182 days during the tax year,
- 2) They are employees of a resident of Korea or of a permanent establishment maintained in Korea,
- 3) Their compensation is not borne by a permanent establishment that the employer has in the United States, and
- 4) Their income for those services is not more than \$3,000.

Pay received by members of the regular complement of a ship or aircraft operated by a resident of Korea in international traffic is exempt.

### Luxembourg

Income (other than corporate directors' fees) that residents of Luxembourg receive for labor or personal services performed in the United States during the tax year is exempt from U.S. income tax if they are in the United States for no more than 180 days during the tax year and the income is not more than \$3,000.

Residents of Luxembourg are also exempt from U.S. income tax on income (other than corporate directors' fees), regardless of the amount, for services performed during the tax year as employees of a resident or corporation of Luxembourg, or a permanent establishment of a U.S. enterprise in

Luxembourg that bore the income, if they are in the United States for no more than 180 days during the tax year.

### Malta

Income that residents of Malta receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not in the United States for more than 90 days during the tax year,
- 2) Do not have a fixed base regularly available to them in the United States for performing their services, and
- 3) Earn net income for those services that is not more than \$10,000 during the tax year if the income is from a U.S. contractor.

If they have a fixed base available in the United States, they are taxed only on the income attributable to that fixed base. There is no dollar limit for condition (3) if the contractor is from a country other than the United States.

Income that residents of Malta receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are not in the United States for more than 183 days during the tax year,
- 2) Their income is paid by or on behalf of an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment or a fixed base that the employer has in the United States.

Pay received by a resident of Malta who is a member of the regular complement of a ship or an aircraft operated in international traffic by a Maltese enterprise is exempt.

These exemptions do not apply to income residents of Malta receive for performing services (both independent and dependent personal services) in the United States as entertainers, such as theater, motion picture, radio, or television artists, musicians, or athletes, if they are present in the United States for more than 89 days during the tax year or the income received is more than \$500 for each day of performance (including rehearsals) or \$5,000 for the tax year.

Directors' fees received by residents of Malta for serving on boards of directors of U.S. corporations are exempt from U.S. tax to the extent of a reasonable fixed amount payable to all directors of the corporation for attending directors' meetings in the United States.

### Morocco

Income that residents of Morocco receive for performing personal services as independent contractors or as self-employed persons (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not in the United States for more than 182 days during the tax year,
- 2) Do not maintain a fixed base in the United States for more than 89 days during the tax year, and
- 3) Earn total income for those services that is not more than \$5,000.

If they have a fixed base in the United States for more than 89 days, they are taxed only on the income attributable to the fixed base.

Income that residents of Morocco receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for less than 183 days during the tax year,
- 2) They are employees of a resident of Morocco or of a permanent establishment of a resident of a country other than Morocco if the permanent establishment is located in Morocco, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Compensation received for services performed by a member of the board of directors of a corporation does not qualify for this exemption.

Income received by an individual for performing labor or personal services as an employee aboard a ship or an aircraft operated in international traffic by a Moroccan resident is exempt from U.S. income tax if the individual is a member of the regular complement of the ship or aircraft.

These exemptions do not apply to income received for services (both independent and dependent personal services) performed in the United States by professional entertainers, including theater, film, radio, and television performers, musicians, and athletes, unless the services are performed by, or for the account of, a Moroccan nonprofit organization.

### Netherlands

Income that residents of the Netherlands receive is exempt from U.S. income tax if it is received for performing personal services in an independent capacity in the United States, and if they are present in the United States for no more than 183 days during the tax year.

Also exempt is the pay of a Netherlands resident who serves as an employee of a resident or corporation of a country other than the United States, or of a permanent establishment of a resident or corporation of the United States located outside the United States. The pay may not be deducted in figuring the profits of the permanent establishment in the United States. This exemption applies only if the Netherlands resident is temporarily present in the United States for no more than 183 days during the tax year.

### New Zealand

Income that residents of New Zealand receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States in any tax year is exempt from U.S. income tax if the residents:

- 1) Are present in the United States for no more than 183 days during any consecutive 12-month period, and
- 2) Do not have a fixed base regularly available to them in the United States for performing the services.

If they have a fixed base available in the United States, they are taxed on the income attributable to the fixed base.

Income that residents of New Zealand receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet these requirements:

- 1) They are present in the United States for no more than 183 days in any consecutive 12-month period,
- 2) Their income is paid by or on behalf of an employer that is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment or fixed base of the employer in the United States.

Pay received by a New Zealand resident as a member of the regular complement of a ship or aircraft operated in international traffic is exempt from U.S. tax.

The exemption from U.S. tax on income from both independent and dependent personal

services does not apply to public entertainers (artists, athletes, etc.) from New Zealand who earn more than \$10,000 in gross receipts, including reimbursed expenses, from their entertainment activities in the United States during the tax year.

### Norway

Income that residents of Norway receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not present in the United States for more than 182 days during the tax year, and
- 2) Do not maintain a fixed base in the United States for more than 182 days during the tax year.

If they do not meet requirement (2), they are taxed only on the income attributable to the fixed base.

This exemption does not apply to residents of Norway who are public entertainers (theater, motion picture, or television artists, musicians, or athletes) if they are in the United States for more than 90 days during the tax year or their pay for services as public entertainers is more than \$10,000 during the tax year.

Income that residents of Norway receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States less than 183 days during the tax year,
- 2) They are employees of a resident of Norway or of a permanent establishment of a resident of a state *other than Norway* if the permanent establishment is situated in Norway, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

However, the exemption does not apply to a resident of Norway who performs services as an employee aboard a ship or an aircraft operated by a United States resident in international traffic or in fishing on the high seas if the resident of Norway is a member of the regular complement of the ship or aircraft.

### Pakistan

Residents of Pakistan who perform personal services (including professional services) for or on behalf of a resident of Pakistan while in the United States for no more than 183 days during the tax year are exempt from U.S. income tax on the income from the services if they are subject to Pakistani tax.

### Philippines

Income that residents of the Philippines receive for performing personal services as independent contractors or as self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Do not have a fixed base regularly available to them in the United States for performing their services,
- 2) Are in the United States for no more than 89 days during the tax year, and
- 3) Earn gross income for those services that is not more than \$10,000 for the tax year if the income is from U.S. contractors.

If they have a fixed base available in the United States, they are taxed only on the income attributable to the fixed base. There is no dollar limit for condition (3) if the contractor is a resident of a country other than the United States.

Income that residents of the Philippines receive for personal services performed in the United States as employees (dependent personal



services) is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for no more than 89 days during the tax year,
- 2) They are employees of a resident of the Philippines or of a permanent establishment maintained in the Philippines, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Pay received by an employee of a resident of the Philippines for personal services performed as a member of the regular complement of a ship or an aircraft operated in international traffic by a resident of the Philippines is exempt.

These exemptions do not apply to income residents of the Philippines receive for performing services (both independent and dependent personal services) in the United States as entertainers, such as theater, motion picture, radio, or television artists, musicians, or athletes, if the income is more than \$100 a day or \$3,000 for the tax year. Regardless of these limits, income of Philippine entertainers is exempt from U.S. tax if their visit to the United States is substantially supported or sponsored by the Philippine Government and the entertainers are certified as qualified for this exemption by the Philippine competent authority.

### Poland

Income that residents of Poland receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States is exempt from U.S. income tax if they are in the United States for no more than 182 days during the tax year.

Income that residents of Poland receive for labor or personal services performed as employees (dependent personal services), including services performed by an officer of a corporation or company, in the United States during the tax year is exempt from U.S. income tax if the residents meet three requirements:

- 1) They are in the United States for no more than 182 days during the tax year,
- 2) Their income is paid by or on behalf of an employer who is not a U.S. resident, and
- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

Pay received by members of the regular complement of a ship or aircraft operated by a resident of Poland in international traffic is exempt.

### Romania

Income that residents of Romania receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. income tax if the residents:

- 1) Are not present in the United States for more than 182 days during the tax year, and
- 2) Do not maintain a permanent establishment in the United States with which the income is effectively connected.

Income that residents of Romania receive for labor or personal services performed as employees (dependent personal services), including services performed by an officer of a corporation or company, in the United States during the tax year is exempt from U.S. income tax if the residents meet these requirements:

- 1) They are in the United States for no more than 182 days during the tax year,
- 2) They are employees of a resident of Romania or of a permanent establishment maintained

in Romania by a resident of the United States, and

- 3) Their income is not borne by a permanent establishment that the employer has in the United States.

These exemptions do not apply to entertainers, such as theater, motion picture, radio, or television artists, musicians, or athletes, who are present in the United States for more than 90 days during the tax year (90 days or more if the entertainers are employees) or who earn gross income as entertainers in the United States of more than \$3,000 during the tax year (\$3,000 or more if they are employees). However, the exemptions *do* apply, without regard to the 90 day-\$3,000 requirement, if the entertainers are present in the United States by specific arrangements between the United States and Romania.

Pay received by members of the regular complement of a ship or aircraft operated by a resident of Romania in international traffic is exempt.

### Spain

Income that residents of Spain receive as independent contractors or self-employed individuals (independent personal services) in the United States are exempt from U.S. income tax if the residents do not have a fixed base available to them in the United States for performing the services. If they have a fixed base, they are taxed only on the income attributable to the fixed base.

Income that residents of Spain receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if:

- 1) The residents are present in the U.S. no more than 183 days in any 12-month period,
- 2) The income is paid by, or on behalf of, an employer who is not a U.S. resident, and
- 3) The income is not borne by a permanent establishment or fixed base the employer has in the United States.

Pay received by members of a regular complement of a ship or aircraft operated in international traffic by a Spanish enterprise is exempt from U.S. tax.

These exemptions do not apply to public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes from Spain who earn more than \$10,000 in income, including reimbursed expenses, from their entertainment activities in the United States during the tax year. Regardless of these limits, Spanish entertainers and athletes are exempt from U.S. tax if their visit to the United States is substantially supported by public funds of Spain, a political subdivision, or local authority.

### Sweden

Income that residents of Sweden receive for labor or personal services (including practicing liberal professions) is exempt from U.S. income tax regardless of amount if it is received for labor or services performed while in the United States for no more than 180 days during the tax year as employees of, or under contract with, a resident, corporation, or other entity of Sweden.

Residents of Sweden are exempt from U.S. income tax on income for such services provided to non-Swedish employers or contractors if the Swedish residents are in the United States for no more than 90 days during the tax year and the income is not more than \$3,000.

These exemptions do not apply to the professional earnings of individuals such as actors, artists, musicians, and professional athletes.

### Switzerland

Income that residents of Switzerland receive for labor or personal services (including practicing liberal professions and performing services as directors) is exempt from U.S. income tax if the

residents are in the United States for no more than 183 days during the tax year and the income is not more than \$10,000.

Also exempt from U.S. income tax is income, regardless of the amount, received by residents of Switzerland in the United States for no more than 183 days during the tax year for the labor or personal services performed as employees of, or under contract with, a resident, corporation, or other entity of Switzerland.

### Trinidad and Tobago

Income (including reimbursed travel expenses) that residents of Trinidad and Tobago receive during the tax year for personal services performed in the United States is exempt from U.S. income tax if the individuals are in the United States for no more than 183 days during the tax year and either:

- 1) The residents are employees of a resident of a country other than the United States or are employees of a permanent establishment of a United States resident outside the United States and the income is not deducted in figuring the profits of a permanent establishment in the United States, or
- 2) The income is not more than \$3,000 (excluding reimbursed travel expenses).

These exemptions do not apply to the professional earnings of public entertainers such as actors, musicians, and professional athletes or to any person providing their services if the pay is more than \$100 per day (excluding reimbursed travel expenses).

Pay received by members of the regular complement of a ship or aircraft operated in international traffic by a resident of Trinidad and Tobago is exempt from U.S. tax.

### Tunisia

Income that residents of Tunisia receive for personal services as independent contractors or self-employed individuals (independent personal services) in the United States are exempt from U.S. income tax if:

- 1) They are not in the United States for more than 183 days during the tax year,
- 2) They do not have a fixed base regularly available in the United States for performing the services, and
- 3) The gross income for the tax year from U.S. residents for services performed in the United States is no more than \$7,500.

If they do not meet condition (2), they are taxed on the income that is attributable to the fixed base.

Income that residents of Tunisia receive for personal services performed in the United States as employees (dependent personal services) is exempt from U.S. income tax if:

- 1) The residents are in the U.S. for no more than 183 days during the tax year,
- 2) Their income is paid by, or on behalf of, an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment or fixed base the employer has in the United States.

Pay received by members of the regular complement of a ship or aircraft operated by an enterprise in international traffic is exempt from U.S. tax if the place of management of the enterprise is in Tunisia.

These exemptions do not apply to income residents of Tunisia receive as public entertainers (such as theater, motion picture, radio, or television artists and musicians) or athletes if their gross receipts, including reimbursed expenses, are more than \$7,500 during the tax year.

These exemptions do not apply to fees received by a resident of Tunisia for services performed as

a director of a U.S. corporation if the fees are treated as a distribution of profits and cannot be taken as a deduction by the corporation.

### Union of Soviet Socialist Republics

Income that residents of the Soviet Union receive for performing personal services in the United States is exempt from U.S. income tax if the Soviet residents are in the United States for no more than 183 days during the tax year.

Pay received by members of the regular complement of a ship or aircraft operated in international traffic by the Soviet Union or a Soviet resident is exempt from U.S. tax.

### United Kingdom

Income that residents of the United Kingdom receive for performing personal services as independent contractors or self-employed individuals (independent personal services) in the United States during the tax year is exempt from U.S. tax if the residents:

- 1) Are not in the United States for more than 183 days during the tax year, and
- 2) Do not have a fixed base regularly available in the United States.

Income that residents of the United Kingdom receive for labor or personal services performed in the United States as employees (dependent personal services) is exempt from U.S. tax if the employees meet three requirements:

- 1) They are in the United States for no more than 183 days,
- 2) Their income is paid by or on behalf of an employer who is not a resident of the United States, and
- 3) Their income is not borne by a permanent establishment or a fixed base that the employer has in the United States.

Income for services performed by members of the regular complement of a ship or aircraft operated in international traffic is taxed by the country of which the employer operating the ship or aircraft is a resident.

These exemptions do not apply to income received for services performed in the United States by entertainers, musicians, and athletes, acting in those capacities if the income, including reimbursed expenses, is more than \$15,000 in any tax year.

## Professors, Teachers, and Researchers

Pay of professors and teachers who are residents of the following countries is generally exempt from U.S. income tax for 2 or 3 years if they temporarily visit the United States to teach or do research. The exemption applies to pay earned by the visiting professor or teacher during the applicable period. For most of the following countries, the applicable period begins on the date of arrival in the United States for the purpose of teaching or engaging in research. Furthermore, for most of the following countries (except Germany (new treaty), India, Malta and the United Kingdom), the exemption applies even if the stay in the United States extends beyond the applicable period.

The exemption generally applies to pay received during a second teaching assignment if both are completed within the specified time, even if the second assignment was not arranged until after arrival in the United States on the first assignment. For each of the countries listed, the conditions are stated under which the pay of a professor or teacher from that country is exempt from U.S. income tax.

### Austria

A professor or teacher who is a resident of Austria and temporarily visits the United States to teach at

a university, college, school, or other educational institution for not longer than 2 years is exempt from U.S. income tax on the income for teaching during that period.

### Belgium

An individual who is a resident of Belgium on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other recognized educational institution in the United States primarily to teach or engage in research, or both, at a university or other accredited educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### China, People's Republic of

An individual who is a resident of the People's Republic of China and who is temporarily in the United States primarily to teach, lecture, or conduct research at a university or other accredited educational institution or scientific research institution is exempt from U.S. income tax on income for the teaching, lecturing, or research for a total of not more than 3 years.

### Denmark

A professor or teacher who is a resident of Denmark and temporarily visits the United States to teach at a university, college, school, or other educational institution for a period not longer than 2 years is exempt from U.S. income tax on income for teaching during that period.

### Egypt

An individual who is a resident of Egypt on the date of arrival in the United States and who is temporarily in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income from the teaching or research for a maximum of 2 years from the date of arrival in the United States. The individual must have been invited to the United States for a period not expected to be longer than 2 years by the U.S. Government or a state or local government, or by a university or other recognized educational institution in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Finland

**Tax years beginning after 1990.** The new U.S.-Finland treaty does not contain a provision for professors, teachers, or researchers.

**Tax years beginning before 1991.** An individual who is a resident of Finland on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other accredited educational institution in the United States primarily to teach or engage in research, or both, at a university or other accredited educational institution is exempt from U.S. income tax on income from the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### France

An individual who is a resident of France on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other accredited educational or research institution in the United States primarily to teach or engage in

research, or both, at a university or other educational or research institution is exempt from U.S. income tax on income from teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Germany, Federal Republic of

**Tax years beginning after 1989 (effective January 1, 1991, for the area that was the German Democratic Republic).** A professor or teacher who is a resident of the Federal Republic of Germany and who is in the United States for not more than 2 years to engage in advanced study or research or teach at an accredited educational institution or institution engaged in research for the public benefit is exempt from U.S. tax on income received for study, research, or teaching. If the individual's visit to the United States exceeds 2 years, the exemption is lost for the entire visit unless the competent authorities of the Federal Republic of Germany and the United States agree otherwise.

The exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

**Tax years beginning before 1990.** A professor or teacher who is a resident of the Federal Republic and temporarily visits the United States to teach at a university, college, school, or other educational institution for a period not longer than 2 years is exempt from U.S. income tax on the income for teaching during that period.

### Greece

A professor or teacher who is a resident of Greece and who is temporarily in the United States to teach at a university, college, or other educational institution for a maximum of 3 years is exempt from U.S. income tax on the income received for teaching during that period.

### Hungary

An individual who is a resident of the Hungary on the date of arrival in the United States and who is temporarily in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States. The individual must have been invited to the United States for a period not expected to be longer than 2 years by the U.S. Government or a state or local government, or by a university or other recognized educational institution in the United States.

The exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Iceland

An individual who is a resident of Iceland on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other recognized educational institution in the United States primarily to teach or engage in research, or both, at a university or other educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### India

An individual is exempt from U.S. tax on income received for teaching or research for up to 2 years if he or she:

- 1) Is a resident of India immediately before visiting the United States, and

- 2) Is in the United States to teach or engage in research at an accredited university or other recognized educational institution in the United States for a period not longer than 2 years.

If the individual's visit to the United States exceeds 2 years, the exemption is lost for the entire visit.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Indonesia

An individual is exempt from U.S. tax on income for teaching or research for a maximum of 2 years from the date of arrival in the United States if he or she:

- 1) Is a resident of Indonesia immediately before visiting the United States, and
- 2) Is in the United States at the invitation of a university, school, or other recognized educational institution to teach or engage in research, or both, at that educational institution.

A resident of Indonesia is entitled to this exemption only once. But this exemption does not apply to income from research carried on mainly for the private benefit of any person.

### Ireland

A professor or teacher from Ireland who visits the United States to teach at a university, college, school, or other educational institution for not longer than 2 years is exempt from U.S. income tax on the income received for teaching during that period.

### Italy

A professor or teacher who is a resident of Italy on the date of arrival in the United States and who temporarily visits the United States to teach or conduct research at a university, college, school, or other educational institution, or at a medical facility primarily funded from government sources, is exempt from U.S. income tax for up to 2 years on pay from this teaching or research.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Jamaica

An individual who is a resident of Jamaica on the date of arrival in the United States and who temporarily visits the United States to teach or engage in research at a university, college, or other recognized educational institution is exempt from U.S. income tax on the income received for the teaching or research for not more than 2 years from the date of arrival in the United States. A resident of Jamaica is entitled to this exemption only once.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Japan

An individual who is a resident of Japan on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other accredited educational institution located in the United States primarily to teach or engage in research, or both, at a university or other educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Korea, Republic of

An individual who is a resident of the Republic of Korea on the date of arrival in the United States

and who is temporarily in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States. The individual must have been invited to the United States for a period not expected to be longer than 2 years by the U.S. Government or a state or local government, or by a university or other recognized educational institution in the United States.

The exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Luxembourg

A resident of Luxembourg who is temporarily in the United States at the invitation of a U.S. university, college, school, or other recognized educational institution only to teach or engage in research, or both, at that educational institution is exempt from U.S. income tax on income for the teaching or research for not more than 2 years from the date of arrival in the United States.

This exemption does not apply to pay for research carried on for the benefit of any person other than the educational institution that extended the invitation.

### Malta

A professor or teacher who is a resident of Malta and visits the United States for not longer than 2 years to carry out advanced study or research or to teach at a university, college, school, or other educational institution is exempt from U.S. income tax on the income received during that period if it was paid from sources outside the United States. If the individual's 2-year period is exceeded, the exemption is lost for the entire visit, including the 2-year period. If the exemption is lost, interest (and sometimes penalties) will be assessed from the original due date of the return to the date the tax is paid.

The exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Netherlands

A professor or teacher who is a resident of the Netherlands and who visits the United States at the invitation of the U.S. Government or a university or other accredited educational institution in the United States mainly to teach or engage in research, or both, at a university or other accredited educational institution is exempt from U.S. income tax on the income from personal services for teaching or research at the educational institution or other similar institution for a maximum of 2 years.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Norway

An individual who is a resident of Norway on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other recognized educational institution in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum period of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Pakistan

A professor or teacher who is a resident of Pakistan and who temporarily visits the United States to teach at a university, college, school, or other educational institution for not longer than 2 years

is exempt from U.S. income tax on the income received for teaching for that period.

### Philippines

An individual who is a resident of the Philippines on the date of arrival in the United States and who is temporarily in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income from the teaching or research for not more than 2 years from the date of arrival in the United States. The individual must have been invited to the United States for a period not expected to be longer than 2 years by the U.S. Government or a state or local government, or by a university or other recognized educational institution in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Poland

An individual who is a resident of Poland on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other recognized educational institution in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Romania

An individual who is a resident of Romania on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other recognized educational institution in the United States primarily to teach or engage in research, or both, at a university or other recognized educational institution is exempt from U.S. income tax on income for the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Sweden

A resident of Sweden who is temporarily in the United States at the invitation of a university, college, school, or other recognized educational institution in the United States only to teach or engage in research, or both, at that educational institution for not more than 2 years from the date of arrival is exempt from U.S. income tax on income for the teaching or research.

This exemption does not apply to income from research carried on for the benefit of any person using or disseminating the results of the research for profit.

### Switzerland

A professor or teacher who is a resident of Switzerland and temporarily visits the United States to teach at a university, college, school, or other educational institution for not longer than 2 years is exempt from U.S. income tax on the income received for teaching for that period.

### Trinidad and Tobago

An individual who is a resident of Trinidad and Tobago on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government, a university, or other accredited educational institution in the United States primarily to teach or engage in research, or both, at a university or other accredited educational institution is exempt from U.S.

income tax on the income received for the teaching or research for a maximum of 2 years from the date of arrival in the United States.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest. Nor does the exemption apply to income if an agreement exists between the Governments of Trinidad and Tobago and the United States for providing the services of these individuals.

### Union of Soviet Socialist Republics

An individual who is a resident of the Soviet Union on the date of arrival in the United States and who is temporarily in the United States at the invitation of the U.S. Government or an educational or scientific research institution in the United States primarily to teach, engage in research, or participate in scientific, technical, or professional conferences is exempt from U.S. income tax on income for teaching, research, or participation in these conferences for a maximum period of 2 years.

This exemption does not apply to income from research carried on mainly for the benefit of a private person, including a commercial enterprise of the United States or a foreign trade organization of the Soviet Union.

The exemption does, however, apply if the research is conducted through an intergovernmental agreement on cooperation.

This exemption also applies to journalists and correspondents who are temporarily in the United States for periods not longer than 2 years and who receive their compensation from abroad. It is not necessary that the journalists or correspondents be invited by the U.S. Government or other appropriate institution, nor does it matter that they are employed by a private person, including commercial enterprises and foreign trade organizations.

### United Kingdom

A professor or teacher who is a resident of the United Kingdom on the date of arrival in the United States and who is in the United States for not longer than 2 years primarily to teach or engage in research at a university, college, or other recognized educational institution is exempt from U.S. income tax on income for the teaching or research. If the individual's 2-year period is exceeded, the exemption is lost for the entire visit, including the 2-year period. If the exemption is lost, interest (and sometimes penalties) will be assessed from the original due date of the return to the date the tax is paid.

The exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

## Students and Apprentices

Residents of the following countries who are in the United States to study or acquire technical experience are exempt from U.S. income tax, under certain conditions, on amounts received from abroad for their maintenance and studies.

This exemption does not apply to the salary paid by a foreign corporation to one of its executives, a citizen and resident of a foreign country who is temporarily in the United States to study a particular industry for an employer. That amount is a continuation of salary and is not received to study or acquire experience.

For each country listed there is a statement of the conditions under which the exemption applies to students and apprentices from that country.

Amounts received from the National Institutes of Health (NIH) under provisions of the Visiting Fellows Program by residents of the following countries are exempt from U.S. income tax to the extent provided for in the respective countries' current tax treaties with the United States: Belgium, China, Cyprus, Egypt, France, Iceland, Indonesia, Japan, Korea, Morocco, the

Netherlands, Norway, Pakistan, the Philippines, Poland, Romania, Spain, Trinidad and Tobago, and Tunisia.

However, amounts received from NIH under the Visiting Associate Program and Visiting Scientist Program are not exempt from U.S. tax as a grant, allowance, or award.

### Australia

A resident of Australia or an individual who was a resident of Australia immediately before visiting the United States who is temporarily here for full-time education is exempt from U.S. income tax on payments received from outside the United States for the individual's maintenance or education.

### Austria

A resident of Austria who is temporarily in the United States only as a student at a university, college, school, or other educational institution is exempt from U.S. income tax on amounts received from abroad for study and maintenance. An apprentice (including *Volontaire* and *Praktikanten*) who is a resident of Austria and is temporarily in the United States only to acquire business or technical experience is also exempt from U.S. income tax on amounts received from abroad for study and maintenance.

A resident of Austria who receives a grant, allowance, or award from a nonprofit religious, scientific, literary, or educational organization is exempt from U.S. income tax on the payments from that organization. Pay for personal services is not exempt.

A resident of Austria who is an employee of an Austrian enterprise, or an organization of the kind mentioned in the preceding paragraph, is exempt from U.S. income tax on pay from abroad paid by that enterprise or organization if:

- 1) The individual is temporarily in the United States for no more than one year only to acquire technical, professional, or business experience from any person other than the enterprise or organization by which employed, and
- 2) The annual income for services, wherever performed, is not more than \$10,000.

### Barbados

A student or business apprentice who is a resident of Barbados on the date of arrival in the United States and is here for full-time education or training is exempt from U.S. income tax on payments received from outside the United States for the individual's maintenance, education, or training.

Nevertheless, an individual who qualifies for this exemption may instead choose to be treated as a resident alien of the United States for all U.S. income tax purposes. Once made, this choice applies for the entire period that the individual remains qualified for exemption and may not be revoked without the permission of the U.S. competent authority.

### Belgium

An individual who is a resident of Belgium on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 for each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of Belgium on the date of arrival in the United States and who is in the United States as an employee of, or under contract with, a resident of Belgium is exempt from U.S. income tax for 12 consecutive months on income received for personal services in the maximum amount of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Belgium or other than a person related to that resident, or
- 2) Study at an educational institution.

An individual who is a resident of Belgium on the date of arrival in the United States and who is temporarily present in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study in the amount of \$10,000.

### Canada

A full-time student, trainee, or business apprentice who is or was a Canadian resident immediately before visiting the United States is exempt from U.S. income tax on amounts received from sources outside the United States for maintenance, education, or training.

Also see Publication 597, *Information on the United States—Canada Income Tax Treaty*.

### China, People's Republic of

A student, business apprentice, or trainee who is a resident of the People's Republic of China on the date of arrival in the United States and who is present in the United States solely to obtain training, education, or special technical experience is exempt from U.S. income tax on the following amounts:

- 1) Payments received from abroad for maintenance, education, study, research, or training,
- 2) Grants or awards from a government, scientific, educational, or other tax-exempt organization, and
- 3) Income from personal services performed in the United States of up to \$5,000 for each tax year.

An individual is entitled to this exemption only for the time reasonably necessary to complete the education or training.

### Cyprus

An individual who is a resident of Cyprus on the date of arrival in the United States and who is temporarily here primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 for each tax year.

An individual is entitled to this exemption for up to 5 tax years and for an additional period as is necessary to complete, as a full-time student, educational requirements for a postgraduate or professional degree from a recognized educational institution.

An individual who is a resident of Cyprus on the date of arrival in the United States and who is temporarily here as an employee of, or under



contract with, a resident of Cyprus is exempt from U.S. income tax for not more than one year on income from personal services for a maximum of \$7,500 if the individual is in the United States primarily to either:

- 1) Acquire technical, professional, or business experience from a person other than a resident of Cyprus or other than a person related to that resident, or
- 2) Study at a university or other recognized educational institution.

An individual who is a resident of Cyprus on the date of arrival in the United States and who is temporarily here for a period of not more than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income for personal services for the training, research, or study. This exemption is limited to \$10,000.

### Denmark

A student or apprentice who is a citizen of Denmark and lives in the United States only to study or acquire business experience is exempt from U.S. income tax on amounts (other than the student's own income) received from abroad for maintenance and studies.

### Egypt

An individual who is a resident of Egypt on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$3,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 tax years and for any additional period of time needed to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

An individual who is a resident of Egypt on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of Egypt is exempt from U.S. income tax on income from personal services for not longer than 12 consecutive months for a maximum of \$7,500 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Egypt or other than a person related to that resident, or
- 2) Study at a university or other educational institution.

An individual who is a resident of Egypt on the date of arrival in the United States and who is temporarily in the United States for no more than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study for a maximum of \$10,000.

### Finland

**Tax years beginning after 1990.** A full-time student, trainee, or business apprentice who is a resident of Finland immediately before visiting the United States is exempt from U.S. income tax on

amounts received from sources outside the United States for maintenance, education, or training.

**Tax years beginning before 1991.** An individual who is a resident of Finland on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other accredited educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 tax years.

An individual who is a resident of Finland on the date of arrival in the United States and who is in the United States as an employee of, or under contract with, a resident of Finland is exempt from U.S. income tax on income received for performing personal services for 12 consecutive months for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Finland or a corporation 50% or more of the voting stock of which is owned by that resident of Finland, or
- 2) Study at an educational institution.

Also exempt is a resident of Finland who is present in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study. The individual is exempt from tax on income from personal services performed in the United States and received for the training, research, or study for a maximum of \$10,000.

### France

An individual who is a resident of France on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other accredited educational institution in the United States, obtain professional training, or study, or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 tax years.

An individual who is a resident of France on the date of arrival in the United States and who is in the United States as an employee of, or under contract with, a resident of France is exempt from U.S. income tax on income received for performing personal services for one tax year for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of France or a corporation 50% or more of the voting stock of which is owned by that resident of France, or
- 2) Study at an educational institution.

### Germany, Federal Republic of

**Tax years beginning after 1989 (effective January 1, 1991, for the area that was the German Democratic Republic).** A student or business apprentice (including Volontäre and Praktikanten) who is or was immediately before visiting the United States a resident of the Federal Republic of Germany and who is present in the United States for full-time education or training is exempt from U.S. income tax on amounts from sources outside the United States for maintenance, education, or training.

An individual who is or was immediately before visiting the United States a resident of the Federal Republic of Germany is exempt from U.S. tax on amounts received as a grant allowance, or award from a nonprofit religious, charitable, scientific, literary, or educational organization.

Individuals described in the previous two paragraphs are also exempt from U.S. tax on compensation for dependent personal services of up to \$5,000 per year if:

- 1) They are present in the United States for not more than 4 years, and
- 2) The services are performed for the purpose of supplementing funds available otherwise for maintenance, education, or training.

If the individual's visit exceeds 4 years, the exemption is lost for the entire visit unless the competent authorities of the Federal Republic of Germany and the United States agree otherwise.

An individual who is a resident of the Federal Republic of Germany and who is employed by a German enterprise or by a nonprofit religious, charitable, scientific, literary, or educational organization is exempt from U.S. tax on compensation for services from sources outside the United States paid by the employer if:

- 1) The individual is temporarily in the United States for not more than one year to acquire technical, professional, or business experience from any person other than his or her employer, and
- 2) The compensation is not more than \$10,000.

**Tax years beginning before 1990.** A resident of the Federal Republic who is temporarily in the United States only as a student at a university, college, school, or other educational institution is exempt from U.S. income tax on amounts received from abroad for study and maintenance. An apprentice (including Volontäre and Praktikanten) who is a resident of the Federal Republic and is temporarily in the United States only to acquire business or technical experience is exempt from U.S. income tax on amounts received from abroad for study and maintenance.

A resident of the Federal Republic who receives a grant, allowance, or award from a nonprofit religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on these payments from the organization, other than income for personal services.

A resident of the Federal Republic who is an employee of an enterprise of the Federal Republic, or an organization of the kind mentioned in the preceding paragraph, is exempt from U.S. income tax on pay from that enterprise or organization if two conditions are met. First, the individual must be temporarily in the United States for not longer than one year only to acquire technical, professional, or business experience from any person other than that enterprise or organization. Second, the annual pay for services, wherever performed, is not more than \$10,000.

### Greece

A student or business apprentice who is a resident of Greece and is temporarily in the United States only to study or acquire business experience is exempt from U.S. income tax on amounts received from sources outside the United States for maintenance or studies.

## Hungary

An individual who is a resident of Hungary immediately before arrival in the United States and is here for full-time education or training is exempt from U.S. income tax on payments received from outside the United States for the individual's maintenance, education, or training.

The full-time student or trainee may instead choose to be treated as a resident alien of the United States for U.S. income tax purposes. Once made, the choice applies for the entire period that the individual remains qualified for exemption as a full-time student or trainee and may not be changed unless permission is obtained from the U.S. competent authority.

## Iceland

An individual who is a resident of Iceland on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of Iceland on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of Iceland is exempt from U.S. income tax for 12 consecutive months on income received for performing personal services for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Iceland or other than a person related to that person, or
- 2) Study at an educational institution.

An individual who is a resident of Iceland on the date of arrival in the United States and who is temporarily present in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study for a maximum of \$10,000.

## India

An individual who is a resident of India immediately before visiting the United States and who is temporarily in the United States primarily for studying or training is exempt from U.S. income tax on payments from abroad for maintenance, study, or training. The exemption does not apply to payments borne by a permanent establishment in the United States or paid by a U.S. citizen or resident, the U.S. Government, or any of its agencies, instrumentalities, political subdivisions, or local authorities.

The individual is entitled to this exemption only for a period of time considered reasonable or customarily required to complete studying or training.

## Indonesia

An individual who is a resident of Indonesia immediately before visiting the United States and who is temporarily in the United States is exempt from U.S. income tax on certain amounts for a period of up to 5 years. To be entitled to the exemption, the individual must be temporarily in the United States for full-time study at a U.S. university, school, or

other recognized educational institution, or for full-time study, research, or training as a recipient of a grant, allowance, or award from either the U.S. or Indonesian Government, a scientific, educational, religious, or charitable organization, or under a technical assistance program entered into by either the U.S. or Indonesian government. If the individual meets any of these requirements, the following amounts are exempt from tax:

- 1) All payments from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual who is a resident of Indonesia immediately before visiting the United States and is temporarily in the United States only as a business or technical apprentice is exempt from U.S. tax on income from personal services of up to \$7,500 for a period of 12 consecutive months.

## Ireland

A student or business apprentice from Ireland who is receiving full-time education or training in the United States is exempt from U.S. income tax on payments received from persons in Ireland for maintenance, education, or training.

## Italy

A student or business apprentice (trainee) who is a resident of Italy on the date of arrival in the United States and who is temporarily in the United States only for education or training is exempt from U.S. income tax on amounts received from outside the United States for maintenance, education, and training.

## Jamaica

A student who is a resident of Jamaica on the date of arrival in the United States and is here for full-time education or training is exempt from U.S. income tax on payments received from outside the United States for the student's maintenance, education, or training.

An individual who is a resident of Jamaica on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of Jamaica is exempt from U.S. income tax on net income from personal services for 12 consecutive months for a maximum of \$7,500 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Jamaica or other than a person related to that resident, or
- 2) Study at a university or other recognized educational institution.

An individual who qualifies for one of the exemptions discussed above may instead choose to be treated as a resident alien of the United States for all U.S. income tax purposes. Once made, the choice applies for the entire period that the individual remains qualified for exemption and may not be revoked unless permission is obtained from the U.S. competent authority.

## Japan

An individual who is a resident of Japan on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other accredited educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and

- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of Japan on the date of arrival in the United States and who is in the United States as an employee of, or under contract with, a resident of Japan is exempt from U.S. income tax for 12 consecutive months on income received for performing personal services for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Japan, or
- 2) Study at an educational institution.

An individual who is a resident of Japan on the date of arrival in the United States and who is temporarily present in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study in the amount of \$10,000.

## Korea, Republic of

An individual who is a resident of the Republic of Korea on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Amounts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of Korea on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of Korea is exempt from U.S. income tax for one year on income received for performing personal services for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Korea or other than a person related to that resident, or
- 2) Study at an educational institution.

An individual who is a resident of Korea on the date of arrival in the United States and who is temporarily present in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study for a maximum of \$10,000.

## Luxembourg

Certain residents of Luxembourg are exempt from U.S. income tax on income received from abroad for employment or amounts received from abroad for their maintenance, education, or training if they are temporarily in the United States. To qualify for this exemption they must be temporarily in the United States only as:

- 1) Students at a university, college, school, or other recognized educational institution, or

- 2) Business apprentices for not more than one year, or
- 3) Recipients of a grant, allowance, or award from a religious, charitable, scientific, literary, or educational organization primarily to study or research.

Certain other residents of Luxembourg who are temporarily in the United States for no more than one year are exempt from U.S. income tax for that period on pay, including pay from an employer abroad, of not more than \$5,000. To qualify for this exemption they must be employees of, or under contract with, a Luxembourg enterprise or a Luxembourg religious, charitable, scientific, literary, or educational organization and be in the United States only to acquire technical, professional, or business experience from a person other than that enterprise or organization.

Residents of Luxembourg are also exempt from U.S. income tax on certain income if they are in the United States for no more than one year only for training, research, or study under an arrangement with the U.S. Government. The income that is exempt in this case is that received for services directly related to this training, research, or study and includes pay from their employer abroad. The amount exempt may not be more than \$10,000.

### Malta

A student, apprentice, or business trainee who is or was a resident of Malta immediately before arrival in the United States and is here for full-time education or training is exempt from U.S. income tax on payments received from outside the United States for the individual's maintenance, education, or training.

An individual who qualifies for the exemption discussed above may instead choose to be treated as a resident alien of the United States for U.S. income tax purposes. Once made, the choice applies for the entire period the individual remains qualified for exemption and may not be changed unless permission is obtained from the U.S. competent authority.

### Morocco

An individual who is a resident of Morocco on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

### Netherlands

A resident of the Netherlands who is temporarily in the United States primarily to study at an accredited educational institution, engage in research of an educational nature, or obtain training in a professional specialty is exempt from U.S. income tax on certain amounts received. The individual is exempt from tax on gifts from abroad for maintenance, education, study, research, or training; a grant, allowance, or award by a government, educational institution, or nonprofit organization; and income from personal services performed in the United States of up to \$2,000 in any tax year. These benefits extend for no more than 5 tax years.

A resident of the Netherlands who is present in the United States as an employee of, or under

contract with, a resident or corporation of the Netherlands to study or secure technical, professional, or business training is exempt from U.S. income tax for one tax year to the extent of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that Netherlands resident or corporation or a corporation 50% or more of the voting stock of which is owned by the Netherlands corporation, or
- 2) Study at a university or other accredited educational institution in the United States.

### New Zealand

A resident of New Zealand or an individual who was a resident of New Zealand immediately before visiting the United States who is in the United States for full-time education is exempt from U.S. income tax on amounts received from abroad for maintenance or education.

### Norway

An individual who is a resident of Norway on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 tax years.

An individual who is a resident of Norway on the date of arrival in the United States and who is in the United States as an employee of, or under contract with, a resident of Norway is exempt from U.S. income tax on income received for performing personal services for 12 consecutive months for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Norway or other than a person related to that resident of Norway, or
- 2) Study at an educational institution.

Also exempt is a resident of Norway who is present in the United States for not longer than one year as a participant in a program sponsored by the Government of the United States primarily to train, research, or study. The individual is exempt from tax on income from personal services performed in the United States and received for the training, research, or study, for a maximum of \$10,000.

### Pakistan

Residents of Pakistan temporarily in the United States are exempt from U.S. income tax on certain income they may receive. To be entitled to this exemption, they must be in the United States only as students at a recognized university, college, or school, or as recipients of grants, allowances, or awards from religious, charitable, scientific, or educational organizations of Pakistan primarily to study or research. The income exempt in these cases is any payment from abroad for maintenance, education, or training, and any pay for personal services of not more than \$5,000 for any tax year.

Other residents of Pakistan who are temporarily in the United States for no more than one year are exempt from U.S. income tax on pay of not more

than \$6,000 received for that period, including pay from the enterprise or organization of which they are employees or with which they are under contract. To qualify for this exemption, they must be employees of, or under contract with, a Pakistani enterprise or religious, charitable, scientific, or educational organization and be in the United States only to acquire technical, professional, or business experience from a person other than that enterprise or organization.

Also exempt from U.S. income tax on certain income are residents of Pakistan temporarily in the United States under an arrangement with the U.S. Government, or any of its agencies or instrumentalities, only for study, training, or orientation. They are exempt from tax on income of not more than \$10,000 for services directly related to their training, study, or orientation, including income from their employer abroad.

### Philippines

An individual who is a resident of the Philippines on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$3,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of the Philippines on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of the Philippines is exempt from U.S. income tax for 12 consecutive months on income received for performing personal services, up to a maximum of \$7,500, if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of the Philippines or other than a person related to that resident, or
- 2) Study at an educational institution.

An individual who is a resident of the Philippines on the date of arrival in the United States, and who is temporarily in the United States (for no more than one year as a participant in a program sponsored by the U.S. Government) primarily to train, research, or study, is exempt from U.S. income tax on income received for personal services for the training, research, or study, up to a maximum of \$10,000.

### Poland

An individual who is a resident of Poland on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award,
- 3) Any other payments received from Poland, except income from performing personal services, and

- 4) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of Poland on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of Poland is exempt from U.S. income tax for not longer than one year on income received for performing personal services for a maximum of \$5,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Poland or other than a person related to that resident, or
- 2) Study at an educational institution.

An individual who is a resident of Poland on the date of arrival in the United States and who is temporarily in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study for a maximum of \$10,000.

### Romania

An individual who is a resident of Romania on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other recognized educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax year.

An individual is entitled to the benefit of this exemption for a maximum of 5 years.

An individual who is a resident of Romania on the date of arrival in the United States and who is temporarily in the United States as an employee of, or under contract with, a resident of Romania is exempt from U.S. income tax for not longer than one year on income received for performing personal services, up to a maximum of \$5,000, if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that resident of Romania or other than a person related to that resident, or
- 2) Study at an educational institution.

An individual who is a resident of Romania on the date of arrival in the United States and who is temporarily in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study is exempt from U.S. income tax on income received for personal services for the training, research, or study, for up to a maximum of \$10,000.

### Spain

An individual who is a resident of Spain at the beginning of the visit to the United States and who is temporarily in the United States is exempt from U.S. income tax on certain amounts for a period of up to 5 years. To be entitled to this exemption, the individual must be temporarily in the United States primarily to study at a U.S. university or other accredited educational institution, to obtain training to become qualified to practice a profession or professional specialty, or to study or do

research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization. If the individual meets any of these requirements, the following amounts are exempt from U.S. tax:

- 1) Payments from abroad (other than compensation for personal services) for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$5,000 for each tax year.

An individual who is a resident of Spain at the beginning of the visit to the United States and is temporarily in the United States as an employee of, or under contract with, a resident of Spain is exempt from U.S. tax on income from personal services for not longer than 12 consecutive months of up to \$8,000 if the individual is in the United States primarily to:

- 1) Acquire technical, professional, or business experience from a person other than that Spanish resident, or
- 2) Study at a university or other accredited educational institution in the United States.

Both the \$5,000 and \$8,000 exemptions include any amount (including personal exemptions) excluded or exempted from tax under U.S. tax law.

This exemption does not apply to income from research carried on mainly for the private benefit of any person rather than in the public interest.

### Sweden

A resident of Sweden is exempt from U.S. income tax on amounts received from abroad as income for employment or payments for maintenance, education, or training if temporarily in the United States only as:

- 1) A student at a recognized university, college, or school,
- 2) A business apprentice, or
- 3) The recipient of a grant, allowance, or award from a religious, charitable, scientific, or educational organization for the purpose of study or research.

A resident of Sweden is also exempt from U.S. income tax on certain pay if temporarily in the United States only for training, research, or study under an arrangement with the U.S. Government. The pay exempt in this case is that received for services directly related to the training, research, or study and includes wages from an employer abroad. This pay is exempt only if it is not more than \$10,000.

### Switzerland

A student or apprentice who is a resident of Switzerland and temporarily visits the United States only to study or acquire business or technical experience is exempt from U.S. income tax on payments from abroad for maintenance or studies.

### Trinidad and Tobago

An individual who is a resident of Trinidad and Tobago on the date of arrival in the United States and who is temporarily in the United States primarily to study at a university or other accredited educational institution in the United States, obtain professional training, or study or do research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization is exempt from U.S. income tax on the following amounts:

- 1) Gifts from abroad for maintenance, education, study, research, or training,
- 2) The grant, allowance, or award, and
- 3) Income from personal services performed in the United States of up to \$2,000 each tax

year, or, if the individual is obtaining training required to qualify to practice a profession or a professional specialty, a maximum of \$5,000 for any tax year.

An individual is entitled to the benefit of this exemption for a maximum period of 5 tax years.

An individual who is a resident of Trinidad and Tobago on the date of arrival in the United States and who is in the United States as an employee of, or under contract with, a resident or corporation of Trinidad and Tobago is exempt from U.S. income tax on income received for performing personal services for one tax year, up to a maximum of \$5,000, if the individual is in the United States primarily to:

- 1) Study at an educational institution, or
- 2) Acquire technical, professional, or business experience from a person other than that resident or corporation of Trinidad and Tobago.

Also exempt is a resident of Trinidad and Tobago who is present in the United States for not longer than one year as a participant in a program sponsored by the U.S. Government primarily to train, research, or study. The individual is exempt from tax on income from personal services performed in the United States and received for the training, research, or study for up to a maximum of \$10,000.

### Tunisia

An individual who is a resident of Tunisia immediately before visiting the United States and who is in the United States for full-time study or training is exempt from U.S. income tax on the following amounts:

- 1) Payments from abroad for full-time study or training,
- 2) A grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization to study or engage in research, and
- 3) Income from personal services performed in the United States of up to \$4,000 in any tax year.

The individual is entitled to this exemption for a maximum of 5 years.

### Union of Soviet Socialist Republics

An individual who is a resident of the Soviet Union and who is temporarily in the United States primarily to study at an educational or scientific research institution or to obtain training for qualification in a profession or specialty is exempt from U.S. income tax on amounts received as stipends, scholarships, or other substitute allowances necessary to provide ordinary living expenses. An individual is entitled to the benefit of this exemption for a maximum of 5 years and for less than \$10,000 in each tax year.

An individual who is a resident of the Soviet Union and who is temporarily in the United States primarily to acquire technical, professional, or commercial experience or perform technical services and who is an employee of, or under contract with, a resident of the Soviet Union is exempt from U.S. income tax on the amounts received from that Soviet Union resident. Also exempt is an amount received from U.S. sources, of not more than \$10,000, that is necessary to provide for ordinary living expenses. The exemption contained in this paragraph is limited to one year.

An individual who is a resident of the Soviet Union and who is temporarily present in the United States under an exchange program provided for by an agreement between governments on cooperation in various fields of science and technology is exempt from U.S. income tax on all income received in connection with the exchange program for a period not longer than one year.



## United Kingdom

A student or business apprentice who is a resident of the United Kingdom at the time of arrival in the United States and who is receiving full-time education or training in the United States is exempt from U.S. income tax on payments received from abroad for maintenance, education, or training.

## Wages and Pensions Paid by a Foreign Government

Wages, salaries, pensions, and annuities paid by the governments of the following countries to their residents who are present in the United States as nonresident aliens generally are exempt from U.S. income tax. The conditions under which the income is exempt are stated for each of the countries listed.

### Australia

Salaries, wages, and similar income, including pensions, paid by Australia, its political subdivisions, agencies, or authorities to its citizens (other than U.S. citizens) for performing government functions as an employee of any of the above entities is exempt from U.S. income tax.

### Austria

Wages, salaries, and similar income and pensions paid by Austria, Bundeslaender, districts or municipalities or other public corporations or a public pension fund to an individual (other than a citizen of the United States or an individual admitted to the United States for permanent residence) are exempt from U.S. income tax.

### Barbados

Income, including a pension, paid from the public funds of Barbados, or its political subdivisions or local authorities, to a citizen of Barbados for performing governmental functions is exempt from U.S. income tax.

However, this exemption does not apply to payments for services in connection with a business carried on by Barbados or its political subdivisions or local authorities.

### Belgium

Wages, salaries, similar income, and pensions and annuities paid by, or from public funds of, Belgium, its political subdivisions, or its local authorities, to citizens of Belgium (or to citizens of countries other than the United States or Belgium who come to the United States and are employed by Belgium or its political subdivisions or local authorities) for performing governmental functions are exempt from U.S. tax.

However, this exemption does not apply to payments for services performed in connection with a trade or business carried on by Belgium or its political subdivisions or local authorities.

### Canada

Wages, salaries, and similar income (other than pensions) paid by Canada or by a Canadian political subdivision or local authority to a citizen of Canada for performing governmental functions are exempt from U.S. income tax. This exemption does not apply, however, to payments for services performed in connection with a trade or business carried on by Canada or its political subdivisions or local authorities.

Also see Publication 597, *Information on the United States—Canada Income Tax Treaty*.

### China, People's Republic of

Income, other than a pension, paid by the People's Republic of China or its political subdivisions or local authorities to an individual for services performed for the paying governmental body is exempt from U.S. income tax. However, the

exemption does not apply to payments for services performed in the United States by a resident of the United States who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a U.S. resident only to perform the services.

Pensions paid by the People's Republic of China for services performed for China are exempt from U.S. income tax unless the recipient is both a citizen and a resident of the United States.

These exemptions do not apply to income or pensions for services performed in connection with a business carried on by the People's Republic of China or its subdivisions or local authorities.

### Cyprus

Wages, salaries, and similar income, including pensions, annuities, and similar benefits, paid from public funds of Cyprus to a citizen of Cyprus for labor or personal services performed as an employee of Cyprus in the discharge of governmental functions are exempt from U.S. income tax.

### Denmark

Wages, salaries, and similar income and pensions paid by Denmark, or any public authority in Denmark, to individuals living in the United States are exempt from U.S. income tax. This exemption does not apply to citizens of the United States or alien residents of the United States.

### Egypt

Wages, salaries, and similar income, including pensions, annuities, and similar benefits, paid from public funds of the Arab Republic of Egypt to a citizen of Egypt (or to a citizen of another country who comes to the United States specifically to work for the Government of Egypt) for labor or personal services performed as an employee of the national Government of Egypt, or any of its agencies, in the discharge of governmental functions are exempt from U.S. income tax.

This exemption does not apply to U.S. citizens or to alien residents of the United States. The exemption also does not apply to payments for services performed in connection with a trade or business carried on by Egypt or any of its agencies.

### Finland

**Tax years beginning after 1990.** Income, other than a pension, paid by Finland, its political subdivisions, statutory bodies, or local authorities to an individual for services performed for the paying governmental body is exempt from U.S. income tax. However, the exemption does not apply to payments for services performed in the United States by a U.S. resident who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a U.S. resident only to perform the services.

Pensions paid by Finland for services performed for Finland are exempt from U.S. income tax only if the recipient is both a resident and citizen of Finland.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Finland or its political subdivisions, statutory bodies, or local authorities.

**Tax years beginning before 1991.** Income, including pensions, paid by or from public funds of the Republic of Finland, a subdivision, a local authority, or a public community thereof to a citizen of Finland in the United States for services performed for Finland (or for a subdivision, local authority, or public community of Finland) in the discharge of governmental functions is exempt from U.S. tax.

## France

Income, including pensions, paid by or from public funds of the French Government or one of its political subdivisions or a local authority thereof to a French national in the United States for services performed for France (or for a political subdivision or a local authority of France) in the discharge of governmental functions is exempt from U.S. tax.

This exemption does not apply to any income or pensions paid because of services (or past services) performed in connection with any industrial or commercial activity carried on by the French Government (or a political subdivision or local authority thereof).

## Germany, Federal Republic of

Wages, salaries, and similar income and pensions paid by the Federal Republic, its Laender, or municipalities, or their public pension funds are exempt from U.S. income tax if paid to individuals other than U.S. citizens and other than individuals admitted to the United States for permanent residence.

This exemption applies under both the old and new United States—German treaties.

## Greece

Wages, salaries, and similar income and pensions paid by Greece or its subdivisions to individuals living in the United States for services rendered to Greece or its subdivisions are exempt from U.S. income tax. This exemption does not apply to citizens of the United States or alien residents of the United States.

## Hungary

Income (other than a pension) paid by the Republic of Hungary or its political subdivisions for labor or personal services performed for the paying governmental body is exempt from U.S. tax. However, the exemption does not apply to payments for services performed in the United States by a resident of the United States who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a resident of the United States only to perform the services.

Pensions paid by Hungary for services performed for Hungary are exempt from U.S. income tax unless the recipient is both a citizen and a resident of the United States.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Hungary or its subdivisions.

## Iceland

Wages, salaries, and similar income, including pensions and similar benefits, paid by or from public funds of the Republic of Iceland, a political subdivision, or a local authority to a citizen of Iceland (other than a U.S. citizen or one admitted to the United States for permanent residence) for labor or personal services performed for Iceland or its political subdivisions or local authorities in the discharge of governmental functions are exempt from U.S. tax.

## India

Income, other than a pension, paid by India, its political subdivisions, or local authorities to an individual for services performed for the paying governmental body is exempt from U.S. income tax. However, the exemption does not apply if the services are performed in the United States by a U.S. resident who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a U.S. resident only to perform the services.

Pensions paid by India for services performed for India are exempt from U.S. tax unless the individual is both a resident and citizen of the United States.

These exemptions do not apply to income or pensions for services performed in connection with a business carried on by India, its subdivisions, or local authorities.

### Indonesia

Income, other than a pension, paid by Indonesia, its political subdivisions, or local authorities to an individual for services performed for the paying governmental body is exempt from U.S. income tax. However, the exemption does not apply if the services are performed in the United States by a U.S. resident who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a U.S. resident only to perform the services.

Pensions paid by Indonesia for services performed for Indonesia are exempt from U.S. tax.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Indonesia, its subdivisions, or local authorities.

### Ireland

Salaries, wages, and similar income and pensions paid by the Government of Ireland to an individual, other than a citizen of the United States, for services performed for it in discharge of its governmental functions are exempt from U.S. income tax. Payments received by an individual who is a citizen of the United States are similarly exempt only if that individual is also a citizen of Ireland. This exemption does not apply to payments for services performed in connection with any trade or business carried on by the Government of Ireland for profit.

### Italy

Income, other than a pension, paid by Italy or by an Italian political or administrative subdivision or local authority to an individual for services performed for the paying governmental body is exempt from U.S. income tax. However, the exemption does not apply to payments for services performed in the United States by a resident of the United States who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a U.S. resident only to perform the services.

The spouse and dependent children of an individual, however, are not subject to the second restriction if that individual is receiving exempt income for governmental services performed for Italy and that individual does not come under either of the restrictions.

Pensions paid by Italy for services performed for Italy are exempt from U.S. income tax unless the recipient is both a citizen and a resident of the United States.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Italy or its subdivisions or local authorities.

### Jamaica

Income, other than a pension, paid by the Government of Jamaica or its political subdivisions or local authorities for personal services performed for the paying governmental body is exempt from U.S. income tax.

This exemption does not apply to payments for services performed in the United States by an individual who is a citizen and resident of the United States.

Pensions paid by Jamaica for services performed for Jamaica are exempt from U.S. income tax unless the recipient is a citizen and resident of the United States *and* was a U.S. citizen at the time the services were performed.

These exemptions do not apply to income or pensions for services performed in connection

with a trade or business carried on by Jamaica or its subdivisions or local authorities.

### Japan

Salaries, wages, and similar income, including pensions and similar benefits, paid by Japan or out of funds to which Japan or any of its local authorities contributes to an individual who is a national of Japan (other than a U.S. citizen or one admitted to the United States for permanent residence) for labor or personal services performed as an employee of the Government of Japan or any of its local authorities are exempt from U.S. income tax.

### Korea, Republic of

Wages, salaries, and similar income, including pensions and similar benefits, paid from public funds of the Republic of Korea to a citizen of Korea (other than a U.S. citizen or an individual admitted to the United States for permanent residence) for services performed as an employee of Korea discharging government functions are exempt from U.S. income tax.

### Luxembourg

Wages, salaries, and similar income, and pensions, annuities, and similar benefits paid by Luxembourg, its political subdivisions, or its compulsory social security funds for services performed for Luxembourg or its political subdivisions in discharge of governmental functions are exempt from U.S. income tax. These amounts are exempt only if they are paid to individuals other than U.S. citizens or individuals admitted to the United States for permanent residence.

### Malta

Income, other than a pension, paid by the Government of Malta or by any of its political subdivisions or local authorities for services performed for the paying governmental body is exempt from U.S. income tax.

This exemption does not apply to payments for services performed in the United States by a resident of the United States who either:

- 1) Is a U.S. citizen, or
- 2) Did not become a U.S. resident solely to perform the services.

The spouse or dependent children of an individual, however, are not subject to the second restriction if that individual is receiving exempt income for governmental services performed for Malta and that individual does not come under either of the restrictions.

Pensions paid by Malta for services performed for Malta are exempt from U.S. income tax unless the recipient is both a citizen and a resident of the United States.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Malta or its subdivisions or local authorities.

### Morocco

Wages, salaries, and similar income, including pensions and similar benefits, paid from public funds of the Kingdom of Morocco to a citizen of Morocco (other than a U.S. citizen or an individual admitted to the United States for permanent residence) for labor or personal services performed for Morocco or for any of its political subdivisions or local authorities in the discharge of governmental functions are exempt from U.S. income tax.

### Netherlands

Wages, salaries, and similar income and pensions, annuities, and similar benefits paid by, or out of funds created by, the Netherlands or a political subdivision of the Netherlands to individuals who are citizens of the Netherlands for services performed for the Netherlands or to any of its political

subdivisions in the discharge of governmental functions are exempt from U.S. income tax.

### New Zealand

Income (other than pensions) paid by the Government of New Zealand, its political subdivisions, or local authorities for services performed in the discharge of governmental functions is exempt from U.S. income tax. However, the income is not exempt if the services are performed in the United States by a U.S. citizen resident in the United States or by a resident of the United States who did not become a resident only to perform the services.

Pensions paid by New Zealand in consideration for past governmental services are exempt from U.S. income tax unless paid to U.S. citizens resident in the United States.

These exemptions do not apply to payments for services performed in connection with any trade or business carried on for profit by the Government of New Zealand (or its subdivisions or local authorities).

### Norway

Wages, salaries, and similar income, including pensions and similar benefits paid by or from public funds of Norway or its political subdivisions or local authorities to a citizen of Norway for labor or personal services performed for Norway or any of its political subdivisions or local authorities in the discharge of governmental functions are exempt from U.S. income tax.

### Pakistan

Income, including pensions and annuities, paid to certain individuals by or on behalf of the Government of Pakistan or the Government of a Province in Pakistan or one of its local authorities for services performed in the discharge of functions of that Government or local authority is exempt from U.S. income tax. To be exempt from tax, these payments must be made to citizens of Pakistan who do not have immigrant status in the United States. This exemption does not apply to payments for services performed in connection with any trade or business carried on for profit.

### Philippines

Wages, salaries, and similar income, including pensions, annuities, and similar benefits, paid from public funds of the Republic of the Philippines to a citizen of the Philippines (or to a citizen of another country other than the United States who comes to the United States specifically to work for the Government of the Philippines) for labor or personal services performed as an employee of the national Government of the Philippines or any of its agencies in the discharge of governmental functions are exempt from U.S. income tax.

### Poland

Wages, salaries, and similar income, including pensions, annuities, and similar benefits, paid from public funds of the Polish People's Republic to a citizen of Poland (other than a U.S. citizen or one admitted to the United States for permanent residence) for labor or personal services performed as an employee of the national Government of Poland in the discharge of governmental functions are exempt from U.S. income tax.

### Romania

Wages, salaries, and similar income, including pensions, annuities, and similar benefits, paid from public funds of the Socialist Republic of Romania to a citizen of Romania (other than a U.S. citizen or one admitted to the United States for permanent residence) for labor or personal services performed as an employee of the national Government of Romania in the discharge of governmental functions are exempt from U.S. income tax.

### Spain

Income, other than a pension, paid by Spain, its political subdivisions, or local authorities to an individual for services performed for the paying governmental body is exempt from U.S. income tax. However, the exemption does not apply to payments for services performed in the United States by a resident of the United States who either:

- 1) Is a citizen of the United States, or
- 2) Did not become a U.S. resident only to perform the services.

Pensions paid by Spain, its political subdivisions, or local authorities for services performed for Spain are exempt from U.S. tax unless the individual is a citizen and resident of the United States.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Spain, its subdivisions, or local authorities.

### Sweden

Wages, salaries, and similar income and pensions paid by Sweden or one of its political subdivisions, territories, or possessions to individuals living in the United States are exempt from U.S. income tax. This exemption does not apply to citizens or resident aliens of the United States.

### Switzerland

Wages, salaries, and similar income and pensions paid by Switzerland or by any of its agencies, instrumentalities, political subdivisions, or other public authorities to an individual (other than a citizen of the United States) are exempt from U.S. income tax. Payments received by an individual who is a citizen of the United States are exempt only if the individual is also a citizen of Switzerland.

### Trinidad and Tobago

Wages, salaries and similar income and pensions, annuities, and similar benefits paid by or from the public funds of the Government of Trinidad and Tobago to a national of that country for services performed for Trinidad and Tobago in the discharge of governmental functions are exempt from U.S. tax.

### Tunisia

Income, other than a pension, paid by Tunisia, its political subdivisions, or local authorities to a Tunisian citizen for personal services performed in the discharge of governmental functions is exempt from U.S. income tax.

Pensions paid by Tunisia, its political subdivisions, or local authorities for services performed for Tunisia are exempt from U.S. income tax unless the recipient is a U.S. citizen.

These exemptions do not apply to income or pensions for services performed in connection with a trade or business carried on by Tunisia, its political subdivisions, or local authorities.

### Union of Soviet Socialist Republics

Wages, salaries, and similar income paid by the Soviet Union to a U.S.S.R. citizen for personal services performed as an employee of a governmental agency or institution of the Soviet Union (excluding Republic or State or local government employees) in the discharge of governmental functions are exempt from U.S. income tax. For this purpose, persons engaged in commercial activities such as employees or representatives of the foreign trade organizations of the U.S.S.R. are not considered as engaged in the discharge of governmental functions.

### United Kingdom

Income, other than pensions, paid by the United Kingdom to employees for services performed for the United Kingdom is exempt from U.S. income tax. The exemption does not extend to employees of a political subdivision or local authority of the United Kingdom. The exemption does not apply if the services are performed in the United States and the recipient is both a citizen and a resident of the United States.

Pensions paid by the United Kingdom or its political subdivisions or local authorities to individuals for services performed in the discharge of governmental functions are exempt from U.S. income tax, unless the recipient is both a citizen and a resident of the United States.

These exemptions do not apply to payments or pensions for services performed in connection with a business carried on by or on behalf of the United Kingdom.

## Explanation of Tables

The paragraphs below describe the tables that follow and provide additional information that may make the tables more useful to you.

### Table 1

This table lists the income tax rates on such income as interest, dividends, capital gains, rents, and royalties. The income code numbers shown in this table are the same as the income codes on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding*.

**Interest.** If you are a nonresident alien who receives interest that is not effectively connected with the conduct of a U.S. trade or business, you do *not* include the interest in income if it is paid on deposits with banks, on accounts or deposits with certain financial institutions, or on certain amounts held by insurance companies. These amounts are exempt from U.S. tax even though they are considered to be income from a U.S. source. Also

exempt from U.S. tax (although considered from U.S. sources) is certain portfolio interest on obligations issued after July 18, 1984. See Publication 519, *U.S. Tax Guide for Aliens*, for more information.

**Social security benefits.** Half the U.S. social security benefit payments to nonresident aliens is subject to U.S. income tax at a rate of 30%, unless taxed at a lower rate or exempt by treaty. This results in a 15% effective tax rate on the total social security benefits received.

### Table 2

This table lists the different kinds of personal service income that may be fully or partly exempt from U.S. income tax. You must meet *all* of the treaty requirements before the item of income can be exempt from U.S. income tax. The income code numbers shown in this table are the same as the income codes on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding*.

**Independent personal services.** The term "independent personal services" generally means services you perform for your own account if you receive the income and bear the losses arising from those services. Examples of these services are those provided by physicians, lawyers, engineers, dentists, and accountants who perform personal services as sole proprietors or partners.

**Dependent personal services.** Dependent personal services usually are those you perform for someone else as an employee.

### Table 3

This table lists the countries that have tax treaties with the United States. The tax treaties are published in the *Internal Revenue Bulletin* (I.R.B.) or *Cumulative Bulletin* (C.B.), which contain official matters of the Internal Revenue Service. The column headed *Citation* shows the number of the I.R.B. or C.B. and the page on which a particular treaty may be found.

Regulations implementing some treaties were issued as Treasury Decisions (T.D.). Other treaties are explained by Treasury explanation. The fifth column lists the T.D. numbers and the I.R.B. or C.B. in which each T.D. or Treasury explanation is printed.

You can subscribe to the I.R.B. and buy volumes of the C.B. from the Government Printing Office or you are welcome to read them in most Internal Revenue Service offices. Many public libraries and business organizations subscribe to a commercial tax service that publishes the treaties and regulations or explanations. You may find it convenient to use those sources.

**Table 1.—Tax Rates for 1991 on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties**

Income code number		1	2	3	5			6 7		9	10	11 12		13	14	21
Country of residence of payee		Interest paid by U.S. obligors general	Interest on real property mortgages	Interest paid to a controlling foreign corporation	Interest on tax-free covenant bonds issued before 1934			Dividends paid by a		Capital gains <sup>a</sup>	Industrial royalties	Copyright royalties		Real property income and natural resources royalties <sup>c</sup>	Pensions and annuities	Social security payment <sup>d</sup>
Name	Code				If obligor assumes more than 2% of tax	If obligor assumes 2% or less of tax	Maturity date extended after 1933 and obligor assumes over 27 1/2% of tax	U.S. corporation general <sup>a</sup>	U.S. subsidiary to foreign parent corporation <sup>a</sup>			Motion pictures and television	Other			
Australia	AS	*10	*10	*10	2	*10	*10	*15	*15	30	*10	*10	*10	30	*0	30
Austria	AU	*0	30	*0	*0	*0	*0	*15	*5	30	*0	*10	*0	30	*0	30
Barbados	BB	*12 1/2	*12 1/2	*12 1/2	2	*12 1/2	*12 1/2	*15	*5	*0	*12 1/2	*12 1/2	*12 1/2	30	*0	30
Belgium	BE	*15	*15	*15	2	*15	*15	*15	*5	*0	*0	*0	*0	30	*0	30
Canada	CA	*15	*15	*15	2	*15	*15	*15	*10	*30	*10	*10	*0	30	*15	0
China, People's Rep. of	CH	*10	*10	*10	2	*10	*10	*10	*10	30	*10	*10	*10	30	*0	30
Cyprus	CY	*10	*10	*10	2	*10	*10	*15	*5	*0	*0	*0	*0	30	*0	30
Denmark	DA	*0	*0	*0	*0	*0	*0	*15	*5	30	*0	*0	*0	30	*0	30
Egypt	EG	*15	30	*15	2	*15	*15	*15	*5	*0	*0	*0	*15	30	*0	0
Finland (new treaty)	FI	*0	*0	*0	*0	*0	*0	*15	*5	*0	*5	*0	*0	30	*0	30
Finland (old treaty)	FI	*0	*0	*0	*0	*0	*0	*15	*5	*0	*0	*0	*0	30	*0	30
France	FR	*0	*0	*0	*0	*0	*0	*15	*5	*0	*5	*0	*0	30	*0	30
Germany (new treaty)	GM	*0	*0	*0	*0	*0	*0	*15	*5	*0	*0	*0	*0	30	*0	0
Germany (old treaty)	GM	*0	*0	*0	*0	*0	*0	*15	*15	*0	*0	*0	*0	30	*0	30
Greece	GR	*0	*0	30	*0	*0	*0	30	30	30	*0	30	*0	30	*0	30
Hungary	HU	*0	*0	*0	*0	*0	*0	*15	*5	*0	*0	*0	*0	30	*0	30
Iceland	IC	*0	*0	*0	*0	*0	*0	*15	*5	*0	*0	30	*0	30	*0	30
India <sup>aa</sup>	IN	*15	*15	*15	2	*15	*15	*25	*15	30	*10	*20	*20	30	*0	30
Indonesia <sup>aa</sup>	ID	*15	*15	*15	2	*15	*15	*15	*15	*0	*10	*15	*15	30	*15	30
Ireland	EI	*0	*0	30	*0	*0	*0	*15	*5	30	*0	*0	*0	*15	*0	30
Italy	IT	*15	*15	*15	2	*15	*15	*15	*5	*0	*10	*8	*5	30	*0	0
Jamaica	JM	*12 1/2	*12 1/2	*12 1/2	2	*12 1/2	*12 1/2	*15	*10	*0	*10	*10	*10	30	*0	30
Japan	JA	*10	*10	*10	2	*10	*10	*15	*10	*0	*10	*10	*10	30	*0	0
Korea, Rep. of	KS	*12	*12	*12	2	*12	*12	*15	*10	*0	*15	*10	*10	30	*0	30
Luxembourg <sup>b</sup>	LU	*0	30	*0	*0	*0	*0	*15	*5	30	*0	*0	*0	30	*0	30
Malta	MT	*12 1/2	*12 1/2	*12 1/2	2	*12 1/2	*12 1/2	*15	*5	*0	*12 1/2	*12 1/2	*0	30	0	0
Morocco	MO	*15	*15	*15	2	*15	*15	*15	*10	*0	*10	*10	*10	30	*0	30
Netherlands	NL	*0	*0	*0	*0	*0	*0	*15	*5	*0	*0	*0	*0	30	*0	30
Netherlands Antilles, Aruba <sup>aa</sup>	NA, AA	*0	30	30	30	30	30	30	30	30	30	30	30	30	30	30
New Zealand	NZ	*10	*10	*10	2	*10	*10	*15	*15	*0	*10	*10	*10	30	*0	30
Norway	NO	*0	*0	*0	*0	*0	*0	*15	*15	*0	*0	*0	*0	30	*0	30
Pakistan <sup>c</sup>	PK	30	30	30	2	30	27 1/2	30	*15	30	*0	30	*0	30	*0	30
Philippines	RP	*15	*15	*15	2	*15	*15	*25	*20	*0	*15	*15	*15	30	*30	30
Poland	PL	*0	*0	*0	*0	*0	*0	*15	*5	*0	*10	*10	*10	30	*30	30
Romania	RO	*10	*10	*10	2	*10	*10	*10	*10	*0	*15	*10	*10	30	*0	0
Spain <sup>aa</sup>	SP	*10	*10	*10	2	*10	*10	*15	*10	*0	*8	*8	*5	30	*0	30
Sweden	SW	*0	*0	*0	*0	*0	*0	*15	*5	*0	0	0	0	30	*0	30
Switzerland	SZ	*5	*5	*5	2	*5	*5	*15	*5	30	*0	*0	*0	30	*0	30
Trinidad & Tobago	TD	30	30	30	2	30	27 1/2	30	30	30	*15	30	*0	30	*0	30
Tunisia <sup>aa</sup>	TS	*15	*15	*15	2	*15	*15	*20	*14	*0	*10	*15	*15	30	*0	30

Table 1.—Continued

Income code number		1	2	3	5			6	7	9	10	11	12	13	14	21
Country of residence of payee		Interest paid by U.S. obligors general	Interest on real property mortgages	Interest paid to a controlling foreign corporation	Interest on tax-free covenant bonds issued before 1934			Dividends paid by a		Capital gains <sup>r</sup>	Industrial royalties	Copyright royalties		Real property income and natural resources royalties <sup>s</sup>	Pensions and annuities	Social security payment <sup>t</sup>
Name	Code				If obligor assumes more than 2% of tax	If obligor assumes 2% or less of tax	Maturity date extended after 1933 and obligor assumes over 27 1/2% of tax	U.S. corporation general <sup>a</sup>	U.S. subsidiary to foreign parent corporation <sup>a</sup>			Motion pictures and television	Other			
Union of Soviet Socialist Republics . . . . .	UR	0	30	30	2	30	27 1/2	30	30	0	0	0	0	30	30	30
United Kingdom . . . . .	UK	0	0	0	0	0	0	15	0.5	30	0	0	0	30	0	0
Other countries . . . . .	OC	30	30	30	2	30	27 1/2	30	30	30	30	30	30	30	30	30

<sup>a</sup> No U.S. tax is imposed on a dividend paid by a U.S. corporation that received at least 80% of its gross income from an active foreign business for the 3-year period before the dividend is declared.

<sup>b</sup> The reduced rate applies to dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest). Under the new U.S.-German treaty, amounts paid or credited before January 1, 1992, are taxed at a 10% rate. For Italy, the reduced rate is 10% if the foreign corporation owns 10% to 50% of the voting stock (for a 12-month period) of the company paying the dividends.

<sup>c</sup> The exemption or reduction in rate applies only if the recipient is subject to tax on this income in the country of residence. Otherwise, a 30% rate applies.

<sup>d</sup> Exemption does not apply to U.S. Government (federal, state, or local) pensions and annuities; a 30% rate applies to these pensions and annuities. For this purpose, railroad retirement tier 2, dual, and supplemental benefits are not considered U.S. Government pensions or annuities. U.S. Government pensions paid to individuals who are both residents and nationals of Finland (new treaty), India, Spain, or the United Kingdom are exempt from U.S. tax.

<sup>e</sup> The treaty exemption that applies to U.S. source capital gains includes capital gains under section 871(a)(2) of the Internal Revenue Code if they are received by a nonresident alien who is in the U.S. for no more than 183 days. (182 days for Belgium and Egypt.)

<sup>f</sup> Includes alimony.

<sup>g</sup> Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with this permanent establishment. For Australia, Barbados, Canada, China, Cyprus, Finland (new treaty), France, Germany (new treaty), Hungary, India, Indonesia, Italy, Jamaica, Malta, New Zealand, Philippines, Spain, Tunisia, and the United Kingdom, the exemption or reduction in rate also does not apply if the property producing the income is effectively connected with a fixed base in the United States from which the recipient performs independent personal services (professional services for royalties paid to a Philippines resident). Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States under section 894(b), I.R.C.

<sup>h</sup> Under the treaty the exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a permanent establishment that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States to apply the reduced treaty rate to that item of income.

<sup>i</sup> Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.

<sup>j</sup> Exemption is not available when paid from a fund under an employees' pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.

<sup>k</sup> Exemption from or reduction in rate of tax does not apply to income of holding companies entitled to special tax benefits under the laws of Luxembourg.

<sup>l</sup> Exemption does not apply to gains from the sale of real property.

<sup>m</sup> The United States has announced termination of the provisions of the United States - Netherlands treaty that apply to the Netherlands Antilles and Aruba, effective January 1, 1988. However, the provisions of Article

VIII(1) of the treaty will continue to apply to certain interest payments made by a domestic corporation to an Antilles corporation.

<sup>n</sup> The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and the Union of Soviet Socialist Republics. It does not include interest from the conduct of a general banking business.

<sup>o</sup> The exemption applies only to gains from the sale or other disposition of property acquired by gift or inheritance.

<sup>p</sup> The exemption does not apply if the recipient was a resident of the United States when the pension was earned or when the annuity was purchased.

<sup>q</sup> Annuities paid in return for other than the recipient's services are exempt.

<sup>r</sup> Generally, if the property was owned by the Canadian resident on September 26, 1980, not as part of the business property of a permanent establishment or fixed base in the U.S., the taxable gain is limited to the appreciation after 1984. Capital gains on personal property not belonging to a permanent establishment or fixed base of the taxpayer in the U.S. are exempt.

<sup>s</sup> Under the treaty, the reduced rate for royalties with respect to tangible personal property is 7%.

<sup>t</sup> Does not include alimony; for Canada, alimony is exempt. For Indonesia, alimony is subject to a 30% rate.

<sup>u</sup> Applies to half the social security payments received from the U.S. Government. The effective rate on the total social security payments received is half the rate shown in the table. These rates also apply to the social security equivalent portion of tier 1 railroad retirement benefits (income code 22) received from the U.S. The remainder of tier 1, all of tier 2, dual, and supplemental railroad retirement benefits (income code 23) are taxed as shown in the column of this table labeled "Pensions and Annuities."

<sup>v</sup> Gains on the disposition of U.S. real property interests are considered effectively connected with a U.S. trade or business and thus are subject to graduated rates of tax rather than the flat percentage shown in this column.

<sup>w</sup> Tax imposed on 70% of gross royalties for rentals of industrial, commercial, or scientific equipment.

<sup>x</sup> The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, the reduced rate does not apply to dividends paid by a REIT if the beneficial owner of the dividends is an individual holding a 10% or greater interest (25% or greater interest for Spain and Tunisia) in the REIT. In that case, a 30% rate applies.

<sup>y</sup> Royalties not taxed at the 5% or 8% rate are taxed at a 10% rate, unless footnote (g) applies.

<sup>z</sup> The exemption does not apply if the recipient of the gain is an individual who is present in the United States for more than 119 days during the year.

<sup>aa</sup> The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution.

<sup>ab</sup> This is the rate for royalties for the use of, or the right to use, industrial, commercial, and scientific equipment. The rate for royalties for information concerning industrial, commercial and scientific know-how is subject to the rate in column 12.

<sup>ac</sup> The rate is 15% if the payor of royalties is the Federal, state, or local government or a public sector company.

<sup>ad</sup> See page 1 of this publication for the effective date of this treaty.

<sup>ae</sup> The exemption does not apply to cinematographic films, or works on film, tape, or other means of reproduction for use in radio or television broadcasting.

<sup>af</sup> U.S. social security benefits paid to individuals who are both residents and nationals of India, are exempt from tax if they are for services performed for the United States, its subsidiaries, or local authorities.



**Table 2.—Compensation for Personal Services Performed in United States Exempt from U.S. Income Tax Under Income Tax Treaties**

Country (1)	Code (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Australia	16	Independent personal services <sup>27</sup>	183 days	Any contractor	No limit	14
	20	Public entertainment	183 days	Any contractor	\$10,000	17
	17	Dependent personal services <sup>15</sup>	183 days	Any foreign resident	No limit	15
	20	Public entertainment <sup>15</sup>	183 days	Any foreign resident	\$10,000	17
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident	No limit	20
Austria	15	Scholarship or fellowship grant	No limit	Any U.S. or foreign resident <sup>5</sup>	No limit	XIII(3)
	16	Independent personal services	183 days	Austrian resident contractor	No limit	X
	17	Dependent personal services	183 days	Other foreign or U.S. resident contractor	\$3,000	X
			183 days	Austrian resident	No limit	X
	18	Teaching	183 days	Other foreign or U.S. resident	\$3,000	X
			2 years	U.S. educational institution	No limit	XII
19	Studying and training: Remittances or allowances Compensation while gaining experience <sup>9</sup>	No limit 1 year	Any foreign resident Austrian resident	No limit \$10,000 <sup>9</sup>	XIII(1) & (2) XIII(4)	
Barbados	16	Independent personal services <sup>7,22</sup>	89 days	Any foreign contractor	No limit	14
	20	Public entertainment	89 days	Any U.S. contractor	\$5,000	14
			No limit	Any contractor	\$250 per day or \$4,000 p.a. <sup>6</sup>	17
	17	Dependent personal services <sup>7,15</sup>	183 days	Any foreign resident	\$5,000	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$250 per day or \$4,000 p.a. <sup>6</sup>	17
19	Studying and training: <sup>20</sup> Remittances or allowances <sup>10</sup>	No limit	Any foreign resident	No limit	20	
Belgium	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	21(1)
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	14(2)(a)(b)
	20	Public entertainment	90 days	Any contractor	\$3,000	14(2)(c)
	17	Dependent personal services	182 days	Belgian resident	No limit	15
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	20
	19	Studying and training: Remittances or allowances Compensation during training	5 years	Any foreign resident	No limit	21(1)
			5 years	U.S. resident	\$2,000 p.a.	21(1)
			12 consec. mo.	Belgian resident	\$5,000	21(2)(b)
		Compensation while gaining experience <sup>4</sup> Compensation under U.S. Government program	12 consec. mo.	Belgian resident	\$5,000	21(2)(a)
			1 year	U.S. Government or its contractor	\$10,000	21(3)
Canada	16	Independent personal services <sup>22</sup>	No limit	Any contractor	No limit <sup>12</sup>	XIV
	17	Dependent personal services	No limit	Any U.S. or foreign resident	\$10,000	XV
	19	Studying and training: Remittances or allowances <sup>10</sup>	183 days	Any foreign resident <sup>11</sup>	No limit <sup>12</sup>	XV
No limit			Any foreign resident	No limit	XX	
China, People's Republic of	15	Scholarship or fellowship grant <sup>24</sup>	No specific limit	Any U.S. or foreign resident <sup>5</sup>	No limit	20(b)
	16	Independent personal services <sup>22</sup>	183 days	Any contractor	No limit <sup>12</sup>	13
	17	Dependent personal services <sup>7,15</sup>	183 days	Any foreign resident	No limit <sup>12</sup>	14
	18	Teaching or research	3 years	U.S. educational or research institute	No limit	19
	19	Studying and training: Remittances or allowances Compensation during training or while gaining experience	No specific limit	Any foreign resident	No limit	20(a)
No specific limit			Any U.S. or foreign resident	\$5,000 p.a.	20(c)	

Cyprus	15	Scholarship or fellowship grant <sup>14</sup>	Generally, 5 years	Any U.S. or foreign resident <sup>1</sup>	No limit	21(1)
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	17
	20	Public entertainment	No limit	Any contractor	\$500 per day or \$5,000 p.a. <sup>6</sup>	19(1)
	17	Dependent personal services <sup>15</sup>	182 days	Any foreign resident	No limit	18
		Director's fees	No limit	U.S. corporation	No limit <sup>23</sup>	20
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$500 per day or \$5,000 p.a. <sup>6</sup>	19(1)
	19	Studying and training: Remittances or allowances	Generally, 5 years	Any foreign resident	No limit	21(1)
		Compensation during training	Generally, 5 years	Any U.S. or foreign resident	\$2,000 p.a.	21(1)
		Compensation while gaining experience <sup>2</sup>	1 year	Cyprus resident	\$7,500	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	21(3)
Denmark	16	Independent personal services	180 days	Danish resident contractor	No limit	XI
			90 days	Other foreign or U.S. resident contractor	\$3,000	XI
	17	Dependent personal services	180 days	Danish resident	No limit	XI
			90 days	Other foreign or U.S. resident	\$3,000	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XIV
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Egypt	15	Scholarship or fellowship grant <sup>14</sup>	5 years	Any U.S. or foreign resident	No limit	23(1)
	16	Independent personal services	89 days	Any contractor	No limit	15
	20	Public entertainment	No limit	Any contractor	\$400 per day	17
	17	Dependent personal services <sup>14,18</sup>	89 days	Egyptian resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day	17
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	22
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	23(1)
		Compensation during training	5 years	U.S. or any foreign resident	\$3,000 p.a.	23(1)
		Compensation while gaining experience	12 consec. mo.	Egyptian resident	\$7,500	23(2)
	Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	23(3)	
Finland (effective for tax years beginning after 1990)	16	Independent personal services <sup>22</sup>	no limit	Any contractor	No limit	14
	20	Public entertainment	no limit	Any contractor	\$20,000 p.a. <sup>23</sup>	17
	17	Dependent personal services <sup>15</sup>	183 days	Any foreign resident	No limit	15
	20	Public entertainment	no limit	Any U.S. or foreign resident	\$20,000 p.a. <sup>23</sup>	17
	19	Studying and training: Remittances or allowances <sup>19</sup>	no limit	Any foreign resident	No limit	20
Finland (Effective for tax years beginning before 1991)	15	Scholarship or fellowship grant <sup>14</sup>	5 years	Any U.S. or foreign resident <sup>1</sup>	No limit	21(1)
	16	Independent personal services	183 days	Any contractor	No limit	18
	17	Dependent personal services <sup>15</sup>	183 days	Any foreign resident	No limit	19
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	20
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	U.S. or any foreign resident	\$2,000 p.a. <sup>6</sup>	21(1)
		Compensation while gaining experience <sup>2</sup>	12 consec. mo.	Finnish resident	\$5,000 <sup>6</sup>	21(2)
	Compensation under U.S. Government program	12 consec. mo.	Finnish resident	\$5,000 <sup>6</sup>	21(2)	
	Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000 <sup>6</sup>	21(3)	

Table 2.—Continued

Country (1)	Code <sup>1</sup> (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
France .....	15	Scholarship or fellowship grant <sup>24</sup> .....	5 years .....	Any U.S. or foreign resident <sup>4</sup> .....	No limit .....	18(1)
	16	Independent personal services <sup>22</sup> .....	183 days .....	Any contractor .....	No limit <sup>12</sup> .....	14
	17	Dependent personal services <sup>18</sup> .....	183 days .....	Any foreign resident .....	No limit <sup>17</sup> .....	15
	18	Teaching <sup>4</sup> .....	2 years .....	U.S. educational or research institution .....	No limit .....	17
	19	Studying and training: Remittances or allowances .....	5 years .....	Any foreign resident .....	No limit .....	18(1)
			5 years .....	U.S. resident .....	\$2,000 p.a. ....	18(1)
			1 year .....	French resident .....	\$5,000 .....	18(2)
			1 year .....	French resident .....	\$5,000 .....	18(2)
Germany, Fed. Rep. of .....	15	Scholarship or fellowship grant .....	No limit .....	Any U.S. or foreign resident <sup>4</sup> .....	No limit .....	20(3)
	16	Independent personal services <sup>7,22</sup> .....	No limit .....	Any contractor .....	No limit .....	14
	20	Public entertainment <sup>22</sup> .....	No limit .....	Any contractor .....	\$20,000 p.a. <sup>25</sup> .....	17
	17	Dependent personal services <sup>7,18</sup> .....	183 days .....	Any foreign resident .....	No limit .....	15
	20	Public entertainment <sup>18</sup> .....	183 days .....	Any foreign resident .....	\$20,000 p.a. <sup>26</sup> .....	17
	18	Teaching <sup>4</sup> .....	2 years .....	U.S. educational or research institution .....	No limit .....	20(1)
	19	Studying and training: Remittances or allowances .....	No limit .....	Any foreign resident .....	No limit .....	20(2)
			4 years .....	Any U.S. or foreign resident .....	\$5,000 p.a. ....	20(4)
1 year .....			Any German enterprise .....	\$10,000 <sup>28</sup> .....	20(5)	
Germany, Fed. Rep. of .....	15	Scholarship or fellowship grant .....	No limit .....	Any U.S. or foreign resident <sup>4</sup> .....	No limit .....	XIII(3)
	16	Independent personal services <sup>18</sup> .....	183 days .....	German resident contractor .....	No limit .....	X
	17	Dependent personal services <sup>18</sup> .....	183 days .....	German resident .....	No limit .....	X
	18	Teaching .....	2 years .....	U.S. educational institution .....	No limit .....	XII
	19	Studying and training: Remittances or allowances .....	No limit .....	Any foreign resident .....	No limit .....	XIII(1) & (2)
			1 year .....	German nonprofit organization .....	\$10,000 .....	XIII(4)
Greece .....	16	Independent personal services .....	183 days .....	Greek resident contractor .....	No limit .....	X
			183 days .....	Other foreign or U.S. resident contractor .....	\$10,000 .....	X
	17	Dependent personal services .....	183 days .....	Greek resident .....	No limit .....	X
			183 days .....	Other foreign or U.S. resident .....	\$10,000 .....	X
	18	Teaching .....	3 years .....	U.S. educational institution .....	No limit .....	XII
	19	Studying and training: Remittances or allowances .....	No limit .....	Any foreign resident .....	No limit .....	XIII
Hungary .....	16	Independent personal services <sup>27</sup> .....	183 days .....	Any contractor .....	No limit .....	13
	17	Dependent personal services <sup>18</sup> .....	183 days .....	Any foreign resident .....	No limit .....	14
	18	Teaching <sup>4</sup> .....	2 years .....	U.S. educational institution .....	No limit .....	17
	19	Studying and training: <sup>29</sup> Remittances or allowances <sup>10</sup> .....	No limit .....	Any foreign resident .....	No limit .....	18(1)



Iceland	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>6</sup>	No limit	22(1)	
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	18	
	20	Public entertainment	90 days	Any contractor	\$100 per day	18	
	17	Dependent personal services <sup>14</sup>	182 days	Iceland resident <sup>14</sup>	No limit	19	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	21	
	19	Studying and training:	Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
			Compensation during training	5 years	U.S. or any foreign resident	\$2,000 p.a.	22(1)
			Compensation while gaining experience	12 consec. mo.	Iceland resident	\$5,000	22(2)
			Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	22(3)
India (Effective for tax years beginning after 1990)	16	Independent personal services <sup>22</sup>	89 days	Any contractor	No limit	15	
	20	Public entertainment <sup>22</sup>	89 days	Any contractor	\$1,500 p.a. <sup>28</sup>	18	
	17	Dependent personal services <sup>14</sup>	183 days	Any foreign resident	No limit	16	
	20	Public entertainment <sup>15</sup>	183 days	Any foreign resident	\$1,500 p.a. <sup>28</sup>	18	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	no limit	22	
	19	Studying and training:					
	Remittances or allowances	no limit	Any foreign resident <sup>27</sup>	No limit	21(1)		
Indonesia (Effective for tax years beginning after 1989)	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>4</sup>	No limit	19(1)	
	16	Independent personal services <sup>22</sup>	119 days	Any contractor	no limit	15	
	20	Public entertainment	no limit	Any contractor	\$2,000 p.a. <sup>25</sup>	17	
	17	Dependent personal services <sup>15</sup>	119 days	Any foreign resident	no limit	16	
	20	Public entertainment	no limit	Any U.S. or foreign resident	\$2,000 p.a. <sup>25</sup>	17	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	no limit	20	
	19	Studying and training:	Remittances or allowances	5 years	Any foreign resident	No limit	19(1)
Compensation during training			5 years	Any foreign or U.S. resident	\$2,000 p.a.	19(1)	
Compensation while gaining experience			12 consec. mo.	Any U.S. or foreign resident	\$7,500	19(2)	
Ireland	16	Independent personal services	183 days	Irish resident contractor	No limit	XI	
	17	Dependent personal services	183 days	Irish resident	No limit	XI	
	18	Teaching	2 years	U.S. educational institution	No limit	XVIII	
	19	Studying and training:					
	Remittances or allowances <sup>10</sup>	No limit	Irish resident	No limit	XIX		
Italy	16	Independent personal services <sup>7,22</sup>	183 days	Any contractor	No limit	14	
	20	Public entertainment	90 days	Any contractor	\$12,000 p.a.	17(1)	
	17	Dependent personal services <sup>7,18</sup>	183 days	Any foreign resident	No limit	15	
	20	Public entertainment	90 days	Any U.S. or foreign resident	\$12,000 p.a.	17(1)	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	20	
	19	Studying and training:					
		Remittances or allowances	No limit	Any foreign resident	No limit	21	
Jamaica	16	Independent personal services <sup>27</sup>	89 days	Any foreign contractor	No limit	14	
	20	Public entertainment	89 days	Any U.S. contractor	\$5,000 p.a.	14	
			No limit	Any contractor	\$400 per day or \$5,000 p.a. <sup>8</sup>	18	
	17	Dependent personal services <sup>14</sup>	183 days	Any foreign resident	\$5,000 p.a.	15	
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day or \$5,000 p.a. <sup>8</sup>	18	
		Directors' fees	No limit	U.S. resident	\$400 per day <sup>8</sup>	16	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	22	
	19	Studying and training: <sup>20</sup>	Remittances or allowances <sup>10</sup>	No limit	Any foreign resident	No limit	21(1)
			Compensation during study	12 consec. mo.	Jamaican resident	\$7,500 p.a.	21(2)
Compensation while gaining experience <sup>9</sup>			12 consec. mo.	Jamaican resident	\$7,500 p.a.	21(2)	

Table 2.—Continued

Country (1)	Code <sup>1</sup> (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)	
		Purpose (3)					
Japan	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>4</sup>	No limit	20(1)	
	16	Independent personal services <sup>22</sup>	183 days	Any contractor	No limit	17	
	20	Public entertainment	90 days	Any contractor	\$3,000 <sup>8</sup>	17	
	17	Dependent personal services <sup>15,17</sup>	183 days	Japanese resident <sup>16</sup>	No limit	18	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	19	
	19	Studying and training:					
			Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
			Compensation during training	5 years	U.S. or any foreign resident	\$2,000 p.a. <sup>9</sup>	20(1)
			Compensation while gaining experience	12 consec. mo.	Japanese resident	\$5,000 <sup>4</sup>	20(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000 <sup>4</sup>	20(3)	
Korea, Rep. of	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>4</sup>	No limit	21(1)	
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	\$3,000 p.a.	18	
	17	Dependent personal services <sup>15</sup>	182 days	Korean resident	\$3,000 p.a.	19	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	20	
	19	Studying and training:					
			Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
			Compensation during training	5 years	Any foreign or U.S. resident	\$2,000 p.a.	21(1)
			Compensation while gaining experience	1 year	Korean resident	\$5,000	21(2)
			Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	21(3)
Luxembourg	15	Scholarship or fellowship grant	No limit	Any foreign resident	No limit	XIV(1)	
	16	Independent personal services	180 days	Luxembourg resident	No limit	XII	
			180 days	Any U.S. or foreign resident	\$3,000	XII	
	17	Dependent personal services <sup>7</sup>	180 days	Luxembourg resident	No limit	XII	
			180 days	Any U.S. or foreign resident	\$3,000	XII	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	XIII	
	19	Studying and training:					
			Remittances or allowances	No limit	Any foreign resident	No limit	XIV(1)
			Compensation during training	1 year	Any foreign resident	No limit	XIV(1)
		Compensation while gaining experience <sup>2</sup>	1 year	Any foreign resident	\$5,000	XIV(2)	
	Compensation under U.S. Government program	1 year	U.S. Government, its contractor, or a foreign resident	\$10,000	XIV(3)		
Malta	16	Independent personal services <sup>22</sup>	90 days	Any foreign contractor	No limit	14	
			90 days	Any U.S. contractor	\$10,000 p.a.	14	
	20	Public entertainment	89 days	Any contractor	\$500 per day or \$5,000 p.a.	18	
	17	Dependent personal services <sup>15</sup>	183 days	Any foreign resident	No limit	15	
	20	Public entertainment	89 days	Any U.S. or foreign resident	\$500 per day or \$5,000 p.a.	18	
					No limit <sup>21</sup>	17	
	18	Directors' fees	No limit	U.S. corporation	No limit <sup>21</sup>	17	
	19	Studying and training: <sup>20</sup>		2 years	Any foreign resident	No limit	21
			Remittances or allowances <sup>19</sup>				

Morocco .....	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	18	
	16	Independent personal services <sup>22</sup>	182 days	Any contractor <sup>12</sup>	\$5,000	14	
	17	Dependent personal services <sup>15</sup>	182 days	Moroccan resident <sup>12,18</sup>	No limit	15	
	19	Studying and training:					
		Remittances or allowances	5 years	Any foreign resident	No limit	18	
	Compensation during training	5 years	U.S. or any foreign resident	\$2,000 p.a.	18		
Netherlands .....	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>4</sup>	No limit	XVIII(1)	
	16	Independent personal services	183 days	Any contractor	No limit	XVI	
	17	Dependent personal services	183 days	Any foreign resident	No limit	XVI	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	XVII	
	19	Studying and training:					
		Remittances or allowances	5 years	Any foreign resident	No limit	XVIII(1)	
Compensation during training		5 years	U.S. or any foreign resident	\$2,000 p.a.	XVIII(1)		
	Compensation while gaining experience <sup>2</sup>	1 year	Netherlands resident	\$5,000	XVIII(2)		
New Zealand .....	16	Independent personal services <sup>22</sup>	183 days	Any contractor	No limit	14	
	20	Public entertainment	183 days	Any contractor	\$10,000	17	
	17	Dependent personal services <sup>15</sup>	183 days	Any foreign resident	No limit	15	
	20	Public entertainment <sup>15</sup>	183 days	Any foreign resident	\$10,000	17	
	19	Studying and training:					
	Remittances or allowances	No limit	Any foreign resident	No limit	20		
Norway .....	15	Scholarship or fellowship grant <sup>24</sup>	5 years	Any U.S. or foreign resident <sup>4</sup>	No limit	16(1)	
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	13	
	20	Public entertainment	90 days	Any contractor	\$10,000 p.a.	13	
	17	Dependent personal services	182 days	Norwegian resident <sup>16</sup>	No limit	14	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	15	
	19	Studying and training:					
		Remittances or allowances	5 years	Any foreign resident	No limit	16(1)	
		Compensation during training	5 years	U.S. or any foreign resident	\$2,000 p.a.	16(1)	
Compensation while gaining experience <sup>2</sup>		12 consec. mo.	Norwegian resident	\$5,000	16(2)		
	Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	16(3)		
Pakistan <sup>11</sup> .....	15	Scholarship or fellowship grant <sup>24</sup>	No limit	Pakistani nonprofit organization	No limit	XIII(1)	
	16	Independent personal services <sup>14</sup>	183 days	Pakistani resident contractor	No limit	XI	
	17	Dependent personal services <sup>14</sup>	183 days	Pakistani resident	No limit	XI	
	18	Teaching	2 years	U.S. educational institution	No limit	XII	
	19	Studying and training:					
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1)	
		Compensation during training	No limit	U.S. or any foreign resident	\$5,000 p.a.	XIII(1)	
Compensation while gaining experience <sup>2</sup>		1 year	Pakistani resident	\$6,000	XIII(2)		
	Compensation while under U.S. Government program	No limit	U.S. Government, its contractor, or any foreign resident employer	\$10,000	XIII(3)		

Table 2.—Continued

Country (1)	Code <sup>1</sup> (2)	Category of Personal Services		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)					
Philippines	15	Scholarship or fellowship grant <sup>24</sup>		5 years	Any U.S. or foreign resident <sup>1</sup>	No limit	22(1)
	16	Independent personal services <sup>22</sup>		89 days	Any foreign contractor	No limit	15
				89 days	Any U.S. resident	\$10,000 p.a.	15
	20	Public entertainment		No limit	Any contractor	\$100 per day or \$3,000 p.a.	17
	17	Dependent personal services <sup>18</sup>		89 days	Any Philippines resident	No limit	18
	20	Public entertainment		No limit	Any U.S. or foreign resident	\$100 per day or \$3,000 p.a.	17
						No limit	21
	18	Teaching <sup>4</sup>		2 years	U.S. educational institution	No limit	21
	19	Studying and training: Remittances or allowances Compensation during study Compensation while gaining experience <sup>3</sup> Compensation while under U.S. Government program		No limit	Any foreign resident	No limit	22(1)
				5 years	Any U.S. or foreign resident	\$3,000 p.a.	22(1)
				12 consec. mo.	Philippines resident	\$7,500 p.a.	22(2)
			1 year	U.S. Government or its contractor	\$10,000 p.a.	22(3)	
Poland	15	Scholarship or fellowship grant <sup>24</sup>		5 years	Any U.S. or foreign resident	No limit	18(1)
	16	Independent personal services		182 days	Any contractor	No limit	15
	17	Dependent personal services <sup>18</sup>		182 days	Any foreign resident	No limit	16
	18	Teaching <sup>4</sup>		2 years	U.S. educational institution	No limit	17
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience Compensation while under U.S. Government program		5 years	Any foreign resident	No limit	18(1)
				5 years	U.S. or any foreign resident	\$2,000 p.a.	18(1)
				1 year	Polish resident	\$5,000	18(2)
			1 year	U.S. Government or its contractor	\$10,000	18(3)	
Romania	15	Scholarship or fellowship grant <sup>24</sup>		5 years	Any U.S. or foreign resident <sup>1</sup>	No limit	20(1)
	16	Independent personal services <sup>22</sup>		182 days	Any contractor	No limit	14
	20	Public entertainment		90 days	Any contractor	\$3,000	14
	17	Dependent personal services <sup>18</sup>		182 days	Romanian resident	No limit	15
	20	Public entertainment		89 days	Romanian resident	\$2,999.99	15
	18	Teaching <sup>4</sup>		2 years	U.S. educational institution	No limit	19
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience Compensation while under U.S. Government program		5 years	Any foreign resident	No limit	20(1)
				5 years	U.S. or any foreign resident	\$2,000 p.a.	20(1)
				1 year	Romanian resident	\$5,000	20(2)
				1 year	U.S. Government or its contractor	\$10,000	20(3)
Spain (Effective for tax years beginning after 1990)	15	Scholarship or fellowship grant <sup>24</sup>		5 years	Any U.S. or foreign resident <sup>1</sup>	No limit	22(1)
	18	Independent personal services <sup>22</sup>		no limit	Any contractor	No limit	15
	20	Public entertainment		no limit	Any contractor	\$10,000 p.a. <sup>25</sup>	19
	17	Dependent personal services <sup>18</sup>		183 days	Any foreign resident	No limit	18
	20	Public entertainment		no limit	Any U.S. or foreign resident	\$10,000 p.a. <sup>25</sup>	19
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience <sup>3</sup>		5 years	Any foreign resident	No limit	22(1)
				5 years	Any U.S. or foreign resident	\$5,000 p.a.	22(1)
			12 consec. mo.	Spanish resident	\$8,000	22(2)	

Sweden .....	15	Scholarship or fellowship grant .....	No limit .....	Any foreign resident <sup>1</sup> .....	No limit .....	XII(1)
	16	Independent personal services <sup>12</sup> .....	180 days .....	Swedish resident contractor .....	No limit .....	XI(b)(1)
			90 days .....	Other foreign or U.S. contractor .....	\$3,000 .....	XI(b)(2)
	17	Dependent personal services .....	180 days .....	Swedish resident .....	No limit .....	XI(b)(1)
			90 days .....	Other foreign or U.S. resident .....	\$3,000 .....	XI(b)(2)
	18	Teaching <sup>4</sup> .....	2 years .....	U.S. educational institution .....	No limit .....	XII(3)
Switzerland .....	16	Independent personal services <sup>9</sup> .....	183 days .....	Swiss resident contractor .....	No limit .....	X
			183 days .....	Other foreign or U.S. contractor .....	\$10,000 .....	X
	17	Dependent personal services <sup>9</sup> .....	183 days .....	Swiss resident .....	No limit .....	X
			183 days .....	Other foreign or U.S. resident .....	\$10,000 .....	X
	18	Teaching .....	2 years .....	U.S. educational institution .....	No limit .....	XII
	19	Studying and training: Remittances or allowances .....	No limit .....	Any foreign resident .....	No limit .....	XIII
Trinidad and Tobago .....	15	Scholarship or fellowship grant <sup>14</sup> .....	5 years .....	Any U.S. or foreign resident <sup>6</sup> .....	No limit .....	19(1)
	16	Independent personal services <sup>13</sup> .....	183 days .....	Any foreign resident contractor .....	No limit .....	17
			183 days .....	Any U.S. contractor .....	\$3,000 <sup>8</sup> .....	17
	17	Dependent personal services <sup>13</sup> .....	183 days .....	Any foreign resident .....	No limit .....	17
			183 days .....	Any U.S. resident .....	\$3,000 <sup>8</sup> .....	17
	18	Teaching <sup>4</sup> .....	2 years .....	U.S. educational institution or U.S. Government .....	No limit .....	18
	19	Studying and training: Remittances or allowances .....	5 years .....	Any foreign resident .....	No limit .....	19(1)
			5 years .....	U.S. or any foreign resident .....	\$2,000 p.a. <sup>6</sup> .....	19(1)
			5 years .....	U.S. or any foreign resident .....	\$5,000 p.a. <sup>6</sup> .....	19(1)
			1 year .....	Trinidad—Tobago resident .....	\$5,000 <sup>6</sup> .....	19(2)
		1 year .....	U.S. Government or its contractor .....	\$10,000 <sup>6</sup> .....	19(3)	
Tunisia .....	15	Scholarship or fellowship grant <sup>19,24</sup> .....	5 years .....	Any U.S. or foreign resident <sup>6</sup> .....	No limit .....	20
	16	Independent personal services <sup>27</sup> .....	183 days .....	U.S. resident contractor .....	\$7,500 p.a. .....	14
	20	Public entertainment .....	no limit .....	Any contractor .....	\$7,500 p.a. <sup>25</sup> .....	17
	17	Dependent personal services <sup>15</sup> .....	183 days .....	Any foreign resident .....	No limit .....	15
	20	Public entertainment .....	no limit .....	Any U.S. or foreign resident .....	\$7,500 p.a. <sup>25</sup> .....	17
	19	Studying and training: <sup>19</sup> Remittances or allowances .....	5 years .....	Any foreign resident .....	No limit .....	20
		5 years .....	Any U.S. or foreign resident .....	\$4,000 p.a. .....	20	
Union of Soviet Socialist Republics .....	15	Scholarship or fellowship grant .....	5 years .....	Any U.S. or foreign resident .....	\$9,999.99 p.a. .....	VI(1)
	16	Independent personal services .....	183 days .....	Any U.S. or foreign contractor .....	No limit .....	VI(2)
	17	Dependent personal services .....	183 days .....	Any U.S. or foreign resident .....	No limit .....	VI(2)
	16	Teaching <sup>4,18</sup> .....	2 years .....	U.S. educational or scientific institution .....	No limit .....	VI(1)
	19	Studying and training: Remittances or allowances .....	5 years .....	Any U.S. or foreign resident .....	\$10,000 p.a. .....	VI(1)
			1 year .....	U.S.S.R. resident .....	No limit <sup>19</sup> .....	VI(1)
		1 year .....	Any U.S. or foreign resident .....	No limit .....	VI(1)	
United Kingdom .....	16	Independent personal services <sup>22</sup> .....	183 days .....	Any contractor .....	No limit <sup>12</sup> .....	14
	17	Dependent personal services <sup>15</sup> .....	183 days .....	Any foreign resident .....	No limit <sup>12</sup> .....	15
	18	Teaching <sup>4</sup> .....	2 years .....	U.S. educational institution .....	No limit .....	20
	19	Studying and training: Remittances or allowances <sup>10</sup> .....	No limit .....	Any foreign resident .....	No limit .....	21

<sup>1</sup> Refers to income code numbers under which the income is reported on Forms 1042S. Personal services must be performed by a nonresident alien individual who is a resident of the specified treaty country.

<sup>2</sup> Applies only if training or experience is received from a person other than alien's employer.

<sup>3</sup> Annual compensation for services wherever performed.

<sup>4</sup> Does not apply to compensation for research work primarily for private benefit.

<sup>5</sup> Grant must be from a nonprofit organization that may be a U.S. or foreign resident. For Sweden, the organization must be located outside the United States. In the case of Indonesia, the exemption also applies to amounts from either the U.S. or Indonesian government.

<sup>6</sup> Reimbursed expenses are not taken into account in figuring any maximum compensation to which the exemption applies. For Japan and Trinidad and Tobago, only reimbursed travel expenses are disregarded in figuring the maximum compensation.

<sup>7</sup> Does not apply to fees of a foreign director of a U.S. corporation.

<sup>8</sup> Does not apply to compensation for research work for other than the U.S. educational institution involved.

<sup>9</sup> Applies to public entertainment in accordance with U.S. reservation rejecting exclusion contained in Art. X(4) of the Switzerland treaty.

<sup>10</sup> Applies only to full-time student or trainee.

<sup>11</sup> Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.

<sup>12</sup> Does not apply to compensation paid to public entertainers (actors, artists, musicians, athletes, etc.). For Canadian or U.K. resident public entertainers, the exemption does not apply if the gross receipts (including reimbursements) are \$15,000 or more in any year. For French resident public entertainers, the exemption does not apply if their gross receipts (including reimbursements) are more than \$10,000 in any tax year.

<sup>13</sup> Does not apply to compensation paid to public entertainers that is more than \$100 a day.

<sup>14</sup> Exemption applies only if the compensation is subject to tax in the country of residence.

<sup>15</sup> The exemption does not apply if the employee's compensation is borne by a permanent establishment that the employer has in the United States. Under the old U.S.-German treaty, the exemption also does not apply if under a contract the compensation is borne by a permanent establishment that the payer has in the United States.

<sup>16</sup> The exemption also applies if the employer is a permanent establishment in the treaty country of a resident of any country other than the treaty country.

<sup>17</sup> This exemption does not apply in certain cases if the employee is a substantial owner of that employer and the employer is engaged in certain defined activities.

<sup>18</sup> The exemption is also extended to journalists and correspondents who are temporarily in the U.S. for periods not longer than 2 years and who receive compensation from abroad.

<sup>19</sup> Also exempt are amounts of \$10,000 or less received from U.S. sources to provide ordinary living expenses.

<sup>20</sup> A student or trainee may choose to be treated as a U.S. resident for tax purposes. If the choice is made, it may not be changed without the consent of the U.S. competent authority.

<sup>21</sup> Does not apply to amounts received in excess of a reasonable fixed amount payable to all directors for attending meetings in the United States.

<sup>22</sup> Exemption does not apply to the extent income is attributable to the recipient's fixed U.S. base. For residents of France and Japan, this fixed base must be maintained in the U.S. for more than 183 days during the tax year for the exemption not to apply; for residents of Belgium, Iceland, Korea, and Norway, the fixed base must be maintained for more than 182 days.

<sup>23</sup> Exemption does not apply if the recipient maintains a permanent establishment in the U.S. with which the income is effectively connected.

<sup>24</sup> Does not apply to payments from the National Institutes of Health (NIH) under its Visiting Associate Program and Visiting Scientist Program.

<sup>25</sup> Exemption does not apply if gross receipts (including reimbursements) exceed this amount during the year. For German or Spanish residents, income is fully exempt if visit to the United States is substantially supported by public funds of Germany or Spain or a German or Spanish political subdivision or local authority.

<sup>26</sup> Exemption does not apply if net income exceeds this amount.

<sup>27</sup> Exemption does not apply to payments borne by a permanent establishment in the United States or paid by a U.S. citizen or resident or the federal, state, or local government.

<sup>28</sup> Exemption does not apply if compensation exceeds this amount.

Table 3.—List of Tax Treaties

Country	Official text symbol	General effective date	Citation	Applicable Treasury explanations or Treasury Decisions (T.D.)
Australia	TIAS' 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246.
Austria	TIAS 3923	Jan. 1, 1957	1957-2 C.B. 985	T.D. 6322, 1958-2 C.B. 1038.
Barbados	TIAS 11090	Jan. 1, 1984		
Belgium	TIAS 7463	Jan. 1, 1971	1973-1 C.B. 619	
Protocol	TIAS	Jan. 1, 1988		
Canada <sup>1</sup>	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298.
China, People's Republic of	TIAS	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447.
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314
Denmark	TIAS 1854	Jan. 1, 1948	1950-1 C.B. 77	T.D. 5692, 1949-1 C.B. 104; T.D. 5777, 1950-1 C.B. 76. 1982-1 C.B. 243.
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	
Finland	TIAS 7042	Feb. 28, 1971	1971-1 C.B. 513	
Finland (new treaty)	TIAS	Jan. 1, 1991		
France	TIAS 6518	Jan. 1, 1967	1968-2 C.B. 691	T.D. 6986, 1969-1 C.B. 365.
Protocol	TIAS 7270	Jan. 1, 1970	1972-1 C.B. 438	
Protocol	TIAS 9500	Jan. 1, 1979	1979-2 C.B. 411	1979-2 C.B. 428.
Protocol	TIAS	Oct. 1, 1985	1987-2 C.B. 326	
Protocol	TIAS	Various		
Germany	TIAS 3133	Jan. 1, 1954	1955-1 C.B. 635	T.D. 6122, 1955-1 C.B. 641.
Protocol	TIAS 5920	Various	1966-1 C.B. 360	
Germany (new treaty)	TIAS	Jan. 1, 1990 <sup>5</sup>		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638.
Protocol	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1059	
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354.
Iceland	TIAS 8151	Jan. 1, 1976	1976-1 C.B. 442	1976-1 C.B. 456.
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS	Jan. 1, 1990		
Ireland	TIAS 2356	Jan. 1, 1951	1958-2 C.B. 1060	T.D. 5897, 1952-1 C.B. 89.
Italy	TIAS 11064	Jan. 1, 1985		
Jamaica	TIAS 10207	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291.
Japan	TIAS 7365	Jan. 1, 1973	1973-1 C.B. 630	1973-1 C.B. 653.
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458.
Luxembourg	TIAS 5726	Jan. 1, 1964	1965-1 C.B. 615	1965-1 C.B. 642.
Malta	TIAS 10567	Jan. 1, 1982	1984-2 C.B. 339	1984-2 C.B. 366.
Morocco	TIAS 10195	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427.
Netherlands	TIAS 1855	Jan. 1, 1947	1950-1 C.B. 93	T.D. 5690, 1949-1 C.B. 92; T.D. 5778, 1950-1 C.B. 92. T.D. 6153, 1955-2 C.B. 777.
Supplemental	TIAS 3366	Nov. 10, 1955	1956-2 C.B. 1116	
Supplemental	TIAS 6051	Jan. 1, 1967	1967-2 C.B. 472	
Netherlands Antilles and Aruba <sup>2</sup>	TIAS 3367	Jan. 1, 1955	1956-2 C.B. 1116	T.D. 6153, 1955-2 C.B. 777.
Protocol	TIAS 5665	Various	1965-1 C.B. 624	
New Zealand	TIAS 10772	Nov. 2, 1983	1990-2 C.B. 274	1990-2 C.B. 303
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693.
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454.
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755.
Philippines	TIAS 10417	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412.
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427.
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504.
Spain	TIAS	Jan. 1, 1991		
Sweden	TS 958 <sup>4</sup>	Jan. 1, 1940	1940-2 C.B. 43	T.D. 4975, 1940-2 C.B. 43.
Supplemental	TIAS 5656	Various	1965-1 C.B. 626	1965-1 C.B. 674.
Switzerland	TIAS 2316	Jan. 1, 1951	1955-2 C.B. 815	T.D. 5867, 1951-2 C.B. 75; T.D. 6149, 1955-2 C.B. 814.
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
Union of Soviet Socialist Republics	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	1976-2 C.B. 475.
United Kingdom	TIAS 9682	Jan. 1, 1975	1980-1 C.B. 394	1980-1 C.B. 455.

<sup>1</sup> Treaties and Other International Act Series.<sup>2</sup> The Canadian Treaty also may be found in Publication 597, *Information on the United States—Canada Income Tax Treaty*.<sup>3</sup> The United States has announced termination of most provisions of the United States—Netherlands Treaty that apply to Netherlands Antilles and Aruba, effective January 1, 1988.<sup>4</sup> Treaty Series.<sup>5</sup> The general effective date for the area that comprises the former German Democratic Republic is January 1, 1991.

## List of Tax Publications for Individuals

## General Guides

1 ..... Your Rights as a Taxpayer  
 17 ..... Your Federal Income Tax  
 225 ..... Farmer's Tax Guide  
 334 ..... Tax Guide for Small Business  
 509 ..... Tax Calendars for 1992  
 553 ..... Highlights of 1991 Tax Changes  
 595 ..... Tax Guide for Commercial Fishermen  
 910 ..... Guide to Free Tax Services

## Specialized Publications

3 ..... Tax Information for Military Personnel  
 (Including Reservists Called to Active  
 Duty)  
 4 ..... Student's Guide to Federal Income Tax  
 54 ..... Tax Guide for U.S. Citizens and  
 Resident Aliens Abroad  
 378 ..... Fuel Tax Credits and Refunds  
 448 ..... Federal Estate and Gift Taxes  
 463 ..... Travel, Entertainment, and Gift  
 Expenses  
 501 ..... Exemptions, Standard Deduction, and  
 Filing Information  
 502 ..... Medical and Dental Expenses  
 503 ..... Child and Dependent Care Expenses  
 504 ..... Tax Information for Divorced or  
 Separated Individuals  
 505 ..... Tax Withholding and Estimated Tax  
 508 ..... Educational Expenses  
 513 ..... Tax Information for Visitors to the  
 United States  
 514 ..... Foreign Tax Credit for Individuals  
 515 ..... Withholding of Tax on Nonresident Aliens  
 and Foreign Corporations  
 516 ..... Tax Information for U.S. Government  
 Civilian Employees Stationed Abroad  
 517 ..... Social Security for Members of the  
 Clergy and Religious Workers  
 519 ..... U.S. Tax Guide for Aliens  
 520 ..... Scholarships and Fellowships  
 521 ..... Moving Expenses  
 523 ..... Tax Information on Selling Your Home  
 524 ..... Credit for the Elderly or the Disabled  
 525 ..... Taxable and Nontaxable Income  
 526 ..... Charitable Contributions  
 527 ..... Residential Rental Property

529 ..... Miscellaneous Deductions  
 530 ..... Tax Information for Homeowners  
 (Including Owners of Condominiums and  
 Cooperative Apartments)  
 531 ..... Reporting Income From Tips  
 533 ..... Self-Employment Tax  
 534 ..... Depreciation  
 537 ..... Installment Sales  
 541 ..... Tax Information on Partnerships  
 544 ..... Sales and Other Dispositions of Assets  
 547 ..... Nonbusiness Disasters, Casualties, and  
 Thefts  
 550 ..... Investment Income and Expenses  
 551 ..... Basis of Assets  
 552 ..... Recordkeeping for Individuals  
 554 ..... Tax Information for Older Americans  
 555 ..... Federal Tax Information on Community  
 Property  
 556 ..... Examination of Returns, Appeal Rights,  
 and Claims for Refund  
 559 ..... Tax Information for Survivors, Executors,  
 and Administrators  
 560 ..... Retirement Plans for the Self-Employed  
 561 ..... Determining the Value of Donated  
 Property  
 564 ..... Mutual Fund Distributions  
 570 ..... Tax Guide for Individuals with Income  
 from U.S. Possessions  
 571 ..... Tax-Sheltered Annuity Programs for  
 Employees of Public Schools and  
 Certain Tax-Exempt Organizations  
 575 ..... Pension and Annuity Income (Including  
 Simplified General Rule)  
 584 ..... Nonbusiness Disaster, Casualty, and  
 Theft Loss Workbook  
 586A ..... The Collection Process (Income Tax  
 Accounts)  
 587 ..... Business Use of Your Home  
 590 ..... Individual Retirement Arrangements  
 (IRAs)  
 593 ..... Tax Highlights for U.S. Citizens  
 and Residents Going Abroad  
 596 ..... Earned Income Credit  
 597 ..... Information on the United States-  
 Canada Income Tax Treaty

721 ..... Tax Guide to U.S. Civil Service  
 Retirement Benefits  
 901 ..... U.S. Tax Treaties  
 907 ..... Tax Information for Persons with  
 Handicaps or Disabilities  
 908 ..... Bankruptcy and Other Debt  
 Cancellation  
 909 ..... Alternative Minimum Tax for Individuals  
 911 ..... Tax Information for Direct Sellers  
 915 ..... Social Security Benefits and Equivalent  
 Railroad Retirement Benefits  
 917 ..... Business Use of a Car  
 919 ..... Is My Withholding Correct for 1992?  
 925 ..... Passive Activity and At-Risk Rules  
 926 ..... Employment Taxes for Household  
 Employers  
 929 ..... Tax Rules for Children and Dependents  
 936 ..... Home Mortgage Interest Deduction  
 938 ..... Real Estate Mortgage Investment Conduits  
 (REMICs) Reporting Information  
 945 ..... Tax Information for Those Affected by  
 Operation Desert Storm  
 946 ..... How To Begin Depreciating Your Property  
 1244 ..... Employee's Daily Record of Tips  
 (Form 4070-A) and Employee's Report  
 of Tips to Employer (Form 4070)  
 1544 ..... Reporting Cash Payments of Over  
 \$10,000

## Spanish Language Publications

1S ..... Derechos del Contribuyente  
 556S ..... Revisión de las Declaraciones de  
 Impuesto, Derecho de Apelación y  
 Reclamaciones de Reembolsos  
 579S ..... Cómo Preparar la Declaración de  
 Impuesto Federal  
 586S ..... Proceso de Cobro (Deudas del Impuesto  
 Sobre Ingreso)  
 850 ..... English-Spanish Glossary of Words  
 and Phrases Used in Publications Issued  
 by the Internal Revenue Service



APPENDIX K





## North Carolina Department of Revenue

James G. Martin, Governor

J. Ward Purrington, Secretary

December 11, 1992

### MEMORANDUM

TO: Members of the Revenue Laws Study Committee  
Ms. Martha Harris

FROM: J. Ward Purrington *JWP*  
Secretary of Revenue

RE: Legislative Fiscal Staff Access to  
Tax Returns and Information

At the Revenue Laws Study Committee meeting on November 24, 1992, it was suggested that if legislators were excluded from access to tax returns, it may be appropriate for legislative fiscal staff to have access to returns from which taxpayer identifying information has been removed. This proposal is embodied as subsection (b)(13) of G.S. 105-259, on page 8, line 6 of Draft legislation 93-LC-011(1.1). The Department is opposed to this suggestion.

The removal of taxpayer names, addresses, social security or federal identification numbers, and other identifying information from tax returns would not guarantee the protection of the identity of some taxpayers since income sources, types or sizes of income and deduction items, information in corporate franchise tax and apportionment schedules, and other information in the returns could identify certain taxpayers. There is some doubt that all returns could be completely stripped of all identifying information and, if so, retain significant value as a source of data to the fiscal staff.

The identification and retrieval of returns for sampling data, photocopying, "sanitizing," and reviewing the returns prior to their removal from the Department's control would be very time consuming and therefore expensive, particularly if the data to be derived from the returns were of dubious value. Obviously, this activity would take time and resources from other tax collecting and research directed activities.

K-1

P.O. Box 25000, Raleigh, North Carolina 27640

State Courier 51-71-00

An Equal Opportunity / Affirmative Action Employer

Under the procedure which has been in place for many years, the General Assembly's fiscal staff requests revenue estimates or other tax return statistical information from the Tax Research Division when data to formulate the estimates or statistical information are available in tax returns. In addition, the Tax Research Division routinely furnishes to the fiscal staff tables of statistical data prepared from the individual income tax biennial sample and annual detail information, the corporate income tax tabulation, and other tax-related data which the fiscal staff uses to compute its own estimates upon occasion. Requests and suggestions from the fiscal staff are utilized by the Tax Research Division in identifying data elements to be included in these samples compiled by the Department.

Requests from the General Assembly are given the highest priority in the Tax Research Division, and we are under the impression that this system works well. Although relevant data for a particular proposal are not always available, or cannot be quickly obtained from tax returns because of the logistics involved, these situations likely would not be improved upon by providing fiscal staff access to the actual returns.

In addition to these problems related to its practical application and the difficulty of ensuring that all taxpayer identifying information has been removed, the proposal carries with it the added risk of inadvertent disclosure of federal tax information which could jeopardize our ability to continue to receive federal tax information under our exchange of information agreement with the Internal Revenue Service. Last year, information we received from the IRS generated assessments for income tax, penalties and interest of \$19.7 million.

Section 6103 of the Internal Revenue Code permits the Internal Revenue Service to disclose federal tax information to any state agency charged with the responsibility of administering the state's tax laws, but only to the extent necessary to administer such laws. Disclosure to any individual who is not the chief executive officer of the state or who is not an employee or legal representative of the agency is not permitted.

Section 6103(b) defines "return" and "return information." Generally, a return includes any tax return, report, or claim, including attachments, supplements, and schedules required to be filed with the Internal Revenue Service. Return information is broadly defined to include any information contained in a tax return, except data in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

If the proposal for fiscal staff access is enacted, we would be required to delete, by some method, all taxpayer identifying information - name, address, social security number, federal identification number, etc. - from the return and from all attachments and schedules included with the return. As pointed out above, even if all of the information directly identifying a taxpayer is removed, there will always be the possibility that the taxpayer can be indirectly identified by some data remaining in the return, particularly in the case of large corporate taxpayers.

If the proposal is enacted, we will have to notify the Internal Revenue Service of the change in our confidentiality statute. Since we would be unable to guarantee the Internal Revenue Service that no taxpayer identifying information will be inadvertently disclosed to the fiscal staff, there is a high probability that they would either terminate the exchange agreement or impose such burdensome recordkeeping, reporting, and inspection requirements on the Department that compliance would be almost impossible. Such a result would mean an end to income from federal tax information sharing in the amount of \$19.7 million, a figure which is growing as federal/state relations and our mutual data processing capabilities improve.

For the reasons set out hereinabove, I reiterate the Department's opposition to the proposal for legislative fiscal staff to access tax returns or other tax information.

JWP/bw



APPENDIX L







LACY H. THORNBURG  
ATTORNEY GENERAL

State of North Carolina  
Department of Justice  
P.O. BOX 629  
RALEIGH  
27602-0629

--MEMORANDUM--

TO: Danny G. Moody  
Director, Vehicle Registration

FROM: Evia L. Jordan *E.L.J.*  
Assistant Attorney General

DATE: August 6, 1992

SUBJECT: SB 369

We have examined the question raised in your memorandum of August 5 regarding whether the plain language of Senate Bill 369 or the legislative intent is controlling. We believe that in this case we are bound by the plain language of the bill.

It is a well-settled rule of statutory construction that a statute must be construed as written where the language contained therein is clear and unambiguous. A review of Senate Bill 369 reveals that the Division may issue a multiyear plate for a semitrailer. Semitrailers are defined in G.S. 20-4.01(31)(d) as "[v]ehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle."

When an applicant applies for a multiyear plate on a vehicle which fits this description, we cannot legally refuse to issue it. In answering this question we realize that the proponents of the bill intended its application to large transfer semitrailers only. It is clear to us that the present statutory language prevents this application. Amending the statute is necessary to carry out the statute's purpose.

As always, please contact us again if further clarification is necessary.

ELJ:ckl



. APPENDIX M



## 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)

<i>Exemption</i>	<i>State</i>	<i>Local</i>
Interstate telecommunications	\$6 million per 1% rate of tax State,	
	\$3 million per 1% local	
Manufacturing machinery (full 6% rate)	160.0	104.0
Spirituuous 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):

<i>Service Type</i>	<i>State</i>	<i>Local</i>
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%

	<u>FY 92-93</u>
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	<u>31.1</u>
<b>TOTAL</b>	<b>\$255.15</b>

FISCAL RESEARCH DIVISION  
REVENUE ESTIMATES FOR SELECTED SALES TAX EXEMPTIONS  
April 15, 1992

<u>Exemptions</u>	<u>FY 93 Cost</u>	<u>Date First Enacted</u>
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
<b>TOTAL</b>	<b>\$176,538,200</b>	

# 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	State	Food	Prescription Medicine	Nonprescription Medicine
Alabama ...	T	E	T	New Jersey .	E	E	E
Arizona ...	E	E	T	New Mexico T	T	T	T
Arkansas ...	T	E	T	New York ..	E	E	E
California ..	E	E	T	North			
Colorado ...	E	E	T	Carolina ...	T	E	T
Connecticut .	E	E	T	North			
District of				Dakota ....	E	E	T
Columbia ..	E	E	E	Ohio .....	E	E	T
Florida ....	E	E	E	Oklahoma ..	T	E	T
Georgia ....	T	E	T	Pennsylvania	E	E	E
Hawaii ....	T	E	T	Rhode			
Idaho .....	T	E	T	Island .....	E	E	E
Illinois ....	T <sup>1</sup>	T <sup>1</sup>	T <sup>1</sup>	South			
Indiana ....	E	E	T	Carolina ...	T	E	T
Iowa .....	E	E	T	South			
Kansas ....	T	E	T	Dakota ....	T	E	T
Kentucky ..	E	E	T	Tennessee ..	T	E	T
Louisiana ..	T <sup>2</sup>	E	T	Texas .....	E	E	T
Maine .....	E	E	T	Utah .....	T	E	T
Maryland ..	E	E	E	Vermont ...	E	E	T
Massachusetts	E	E	T	Virginia ...	T	E	T <sup>3</sup>
Michigan ..	E	E	T	Washington .	E	E	T
Minnesota ..	E	E	E	West			
Mississippi .	T	E	T	Virginia ...	T	E	T
Missouri ...	T	E	T	Wisconsin ..	E	E	T
Nebraska ...	E	E	T	Wyoming ..	T	E	T
Nevada ....	E	E	T				

<sup>1</sup> Subject to a 1% tax.

<sup>2</sup> Subject to a 2% tax until July 1, 1992.

<sup>3</sup> Exempt, effective July 1, 1992.

¶ 60-110 Food and Drugs

©1992, Commerce Clearing House, Inc.

APPENDIX N



# 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.<sup>1</sup> 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.

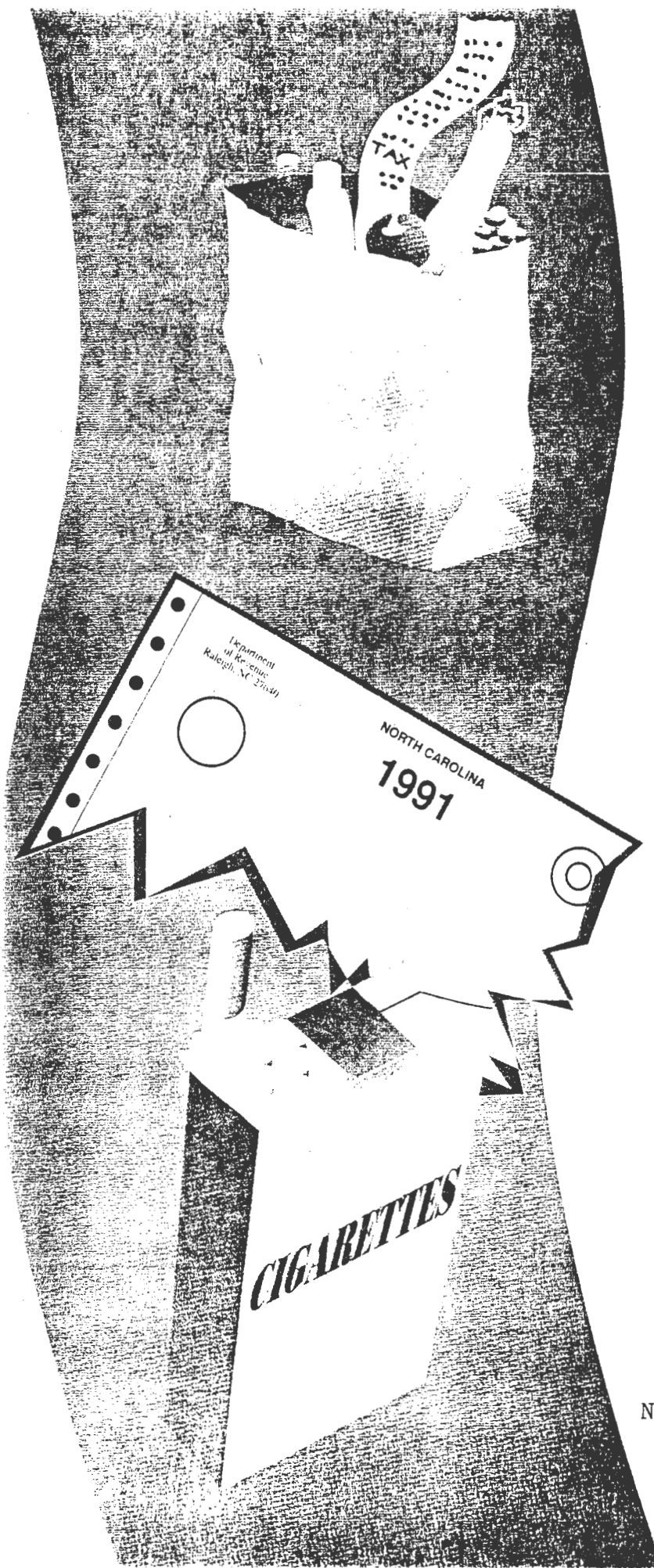
## Background

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.

N-1

*The author is an Institute of Government faculty member who specializes in public finance. Illustrations by Michael Brady.*



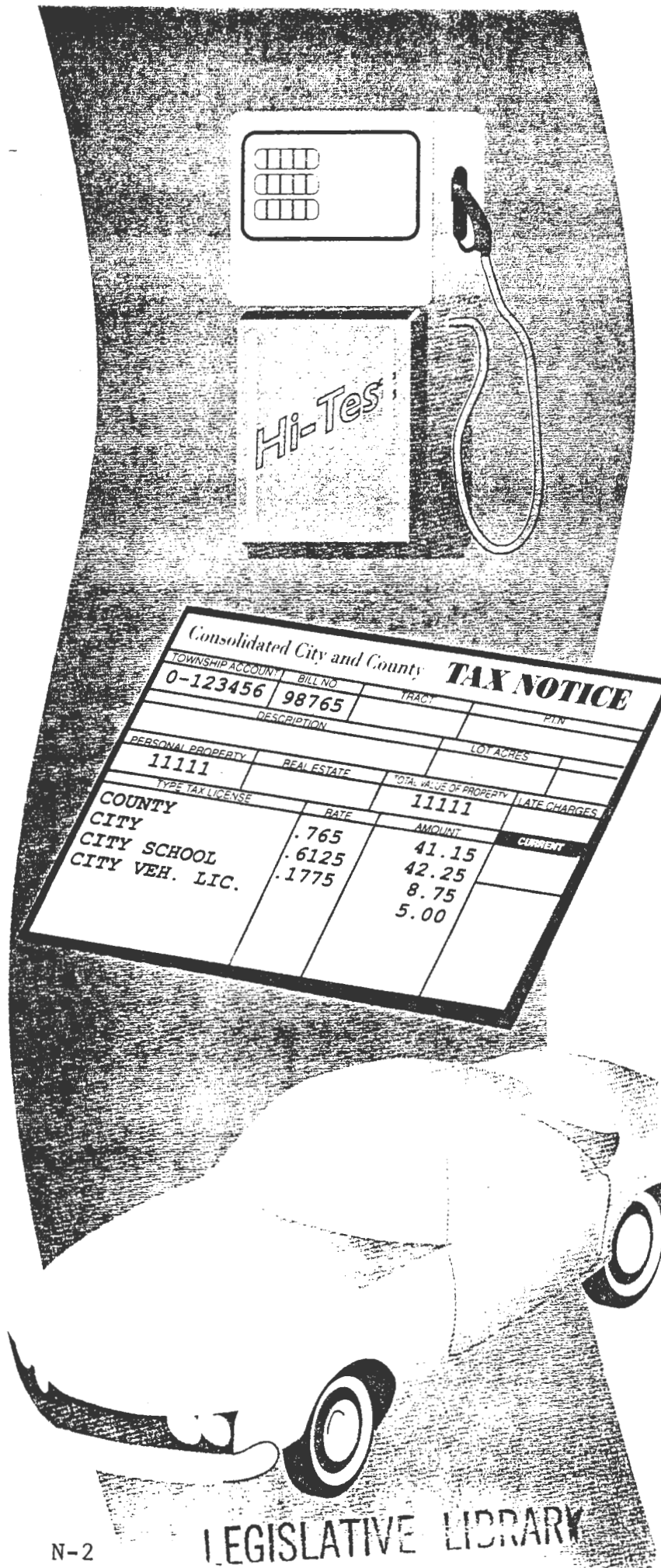
- In 1986 Congress reformed the federal corporate and personal income taxes. These reforms directly affected how North Carolina taxed corporations because the federal tax is the basis for the state corporate income tax, and in 1989 the General Assembly adopted the reformed federal definition of taxable 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.<sup>2</sup>

### **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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### **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

	Total State & Local	Percentage Change			Municipalities <sup>a</sup>
		State	Local	Counties	
<b>North Carolina</b>					
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	-	-
<b>United States</b>					
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	-	-

<sup>a</sup>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 percentage 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 state-wide, 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.<sup>6</sup> 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 <sup>a</sup>	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 <sup>b</sup>					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 <sup>a</sup>	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 <sup>b</sup>					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 <sup>a</sup>	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 <sup>b</sup>					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%				

<sup>a</sup>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.

<sup>b</sup>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.

Consolidated City and County TAX NOTICE			
TOWNSHIP ACCOUNT	BILL NO	TRACT	PIN
0-123456	98765		
DESCRIPTION			
PERSONAL PROPERTY	REAL ESTATE	TOTAL VALUE OF PROPERTY	LATE CHARGES
11111		11111	
TYPE TAX LICENSE			
	RATE	AMOUNT	CURRENT
COUNTY	.765	41.15	
CITY	.6125	42.25	
CITY SCHOOL	.1775	8.75	
CITY VEH. LIC.		5.00	