REVENUE LAWS STUDY COMMITTEE

REPORT TO THE 2001 GENERAL ASSEMBLY OF NORTH CAROLINA 2002 SESSION

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REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27603

Senator John H. Kerr, III, Co-Chair ***Representative Paul Luebke, Co-Chair***

May 28, 2002

TO THE MEMBERS OF THE 2001 GENERAL ASSEMBLY (2002 Regular Session):

The Revenue Laws Study Committee submits to you for your consideration its report pursuant to G.S. 120-70.106.

Respectfully Submitted,

Rep. Paul Luebke, Co-Chair

Sen. John Kerr, Co-Chair

2001-2002

REVENUE LAWS STUDY COMMITTEE

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PREFACE

The Revenue Laws Study Committee is established in Article 12L of Chapter 120 of the General Statutes, to serve as a permanent legislative commission to review issues relating to taxation and finance. The Committee consists of sixteen members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. Committee members may be legislators or citizens. Each of the appointing authorities designates one member to serve as co-chair. The co-chairs for 2001-2002 are Senator John Kerr and Representative Paul Luebke.

G.S. 120-70.106 gives the Revenue Law Study Committee's study of the revenue laws a very broad scope, stating that the Committee "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." A copy of Article 12L of Chapter 120 of the General Statutes is included in Appendix A. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

Before it was created as a permanent legislative commission, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977.

COMMITTEE PROCEEDINGS

The Revenue Laws Study Committee met three times before the convening of the 2002 Regular Session of the 2001 General Assembly on May 28, 2002. Although the Committee received many requests from legislators, taxpayers, the Department of Revenue, and interest groups to study numerous issues of tax policy and tax administration, the Committee chose to consider only those issues that it felt needed to be addressed in the 2002 Regular Session of the 2001 General Assembly. The Committee considered all proposed tax changes in light of general principles of tax policy and as part of an examination of the existing tax structure as a whole.

REVIEW OF THE RECOMMENDATIONS MADE TO THE 2001 GENERAL ASSEMBLY

The 2001 General Assembly enacted 10 of the Revenue Laws Study Committee's 12 legislative proposals in whole or in part. Appendix B lists the Committee's recommendations and the action taken on them in 2001. A document entitled "**2001 Tax Law Changes**" summarizes all of the tax legislation enacted in 2001. It is available in the Legislative Library located in the Legislative Office Building. Appendix C contains a brief summary of the 2001 tax legislation in the form of a slide presentation.

BUDGET AND REVENUE OUTLOOK

At its first meeting on April 11, 2002, the Revenue Laws Study Committee began its work with a briefing on the current year's budget and an overview of the budget outlook for fiscal year 2002-03 from Lynn Muchmore and David Crotts with the Fiscal Research Division. Its review of the current fiscal year's budget assumed a $955 million revenue shortfall. In March 2002, the General Fund revenues were running 6.5% behind the $9.9 billion target. This revenue shortfall becomes part of the $1 billion projected shortfall for fiscal year 2002-03. The Committee understands that the budget outlook has deteriorated since its first meeting in April. The Committee did not have time to revisit the issue before the convening of the 2002 Regular Session of the 2001 General Assembly. Appendix D contains a discussion of the issues and prospects for the General Fund Revenue Outlook for 2001-2003 presented to the Committee at its April meeting.

CONFORMITY TO THE FEDERAL TAX ACTS

The Revenue Laws Study Committee spent a considerable amount of time reviewing the tax law changes enacted by Congress in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Job Creation and Worker Assistance Act of 2002. It also studied the fiscal impact of conformity on North Carolina revenues[1]. The Committee recognized that a sound tax structure is one that is simple and easy for taxpayers to comply with and is inexpensive for the Department of Revenue to administer. The goals of tax simplicity and ease of administration are most readily achieved

[1] See Appendix I.

with a tax structure that conforms as much as possible to federal laws to which a taxpayer must already comply. However, it is also the responsibility of a sound tax structure to provide the necessary revenues to support the State's budget. In light of the fiscal cost of conformity and the current budget outlook, the Committee did not make any recommendation on this issue.

The Revenue Laws Study Committee began its discussion of the recent federal tax law changes with an explanation of the changes by Professor Walter Nunnallee, a professor of tax law at NC Central University School of Law. The federal Economic Growth and Tax Relief Reconciliation Act of 2001 ('EGTRRA'), was enacted June 7, 2001. It includes numerous changes to rules for pensions and benefits, a repeal of the federal estate tax, a phase-out of the state death tax credit, as well as many other changes to the Internal Revenue Code. Appendix E contains an explanation of EGTRRA. The federal Job Creation and Worker Assistance Act of 2002 ('Economic Stimulus bill'), was enacted March 9, 2002. Among other tax law changes, it includes an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 10, 2001, and before September 11, 2004. Appendix F contains a summary of the Economic Stimulus bill.

The Committee heard from many interested parties on the issue of whether or not the State should conform to the federal changes, especially from people involved in managing pension plans. All of the people interested in pension plans encouraged the Committee members to conform to the federal tax law changes involving pension plan limits and roll-overs. Appendix G contains a summary of the remarks made by one of the

interested parties who spoke on this issue. Anne Allen and Brian Usischon, representing TIAA-CREF, spoke of the cost of not conforming to both the State and the State's residents as well as the administrative difficulties and uncertainties created by not conforming.

The Committee collected information on whether other similarly situated states are conforming to the federal tax law changes. It learned that some states are choosing to "decouple" from the federal tax law changes concerning the phase-out of the state death tax credit and the accelerated 30% bonus depreciation allowance. Appendix H contains two charts depicting this information. The charts were updated May 29, 2002.

Both of these federal acts will substantially affect a taxpayer's federal taxable income, and will, to the extent North Carolina conforms to them, have a substantial impact on North Carolina's tax revenues. The fiscal impact on the State's General Fund of fully conforming to both federal acts would be a loss of $258.6 million for the 2002-03 fiscal year. Of this loss to the General Fund, $213.2 million is associated with the 30% accelerated bonus depreciation provision. The pension tax changes would reduce the State's General Fund by approximately $6.1 million for 2002-03 and $14.3 for 2003-04. A chart detailing the fiscal impact of conforming to the federal acts is contained in Appendix I.

In previous years, the State has chosen to conform on most issues where State law tracks federal law. Therefore, the Department of Revenue is administering the State law on the assumption that the General Assembly will choose to conform to most of the changes in the EGTRRA. It will also process current year original returns as if the Code reference date included

the provisions in the 2002 Economic Stimulus bill. If the Legislature elects not to conform to the accelerated bonus depreciation provision from the Economic Stimulus bill, taxpayers who claimed the bonus depreciation on their original returns will have to amend their returns and pay any tax and interest due. Taxpayers who have already filed original returns and who now are filing amended federal returns to claim the bonus depreciation should delay filing amended North Carolina returns until the Legislature determines whether it will adopt the bonus depreciation provisions. If a taxpayer files an amended return to claim the bonus depreciation, the Department will not process that amended return until the matter is resolved legislatively. The Department's administration of the federal changes is contained in Appendix J.

PRESENT-USE VALUE CLASSIFICATION

The Revenue Laws Study Committee noted that it is one of three legislative studies concerned with issues surrounding taxation; the other two are the Tax Policy Study Commission and the Property Tax Study Commission. The appointments to the Property Tax Study Commission were not completed before April of 2002. In light of the Property Tax Study Commission's inability to meet, the Revenue Laws Study Committee agreed to hear property tax issues that needed to be addressed by the 2002 Regular Session of the 2001 General Assembly.

The Revenue Laws Study Committee revisited the issue of using cash rents to determine the present-use value of agricultural land and horticultural land instead of the current method, which is based on the price

and yield of corn and soybeans. The Revenue Laws Study Committee dealt with this issue extensively in 1997-98 and it recommended legislation to the 1999 General Assembly that is similar to the legislation recommended in Legislative Proposal 6. The Committee continues to believe that the new method of valuation contained in Legislative Proposal 6 would enhance uniformity and fairness by replacing the current method, which yields unrealistically low values, with a method based upon data generated by the farmers themselves. Since 1999, representatives from the Department of Revenue, the NC Farm Bureau, the Association of County Commissioners, and the Association of Assessing Officers have continued to work on the issue of how to improve the present-use value classification and Legislative Proposal 6 is the culmination of that effort.

QUALIFIED BUSINESS VENTURE TAX CREDIT

The General Assembly enacted the qualified business venture tax credit in 1987 to promote economic development for North Carolina businesses. The initial credits applied to both corporations and individual taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in Fulton Corp. v. Faulkner, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit was to expire for investments made on or after January 1, 1999. In 1998, as part of the appropriations bill, the credit was extended for four additional years until January 1, 2003.

Section 1 of Resolution 2001-36 sets forth the types of legislation that may be considered during the 2002 Regular Session of the 2001 General Assembly. Under Resolution 2001-36, a bill to extend the sunset past the current expiration date of January 1, 2003, would not be eligible for introduction in the 2002 Regular Session. Parties interested in extending the sunset on the tax credit asked the Revenue Laws Study Committee to discuss the tax credit at its last meeting on May 28, 2002, and to consider recommending legislation to extend the sunset.[2]

The Committee agreed to discuss the issue. It heard testimony on the merits of the tax credit from interested parties. It learned about the credit's history, the types of businesses that claim the credit, and the economic impact of the credit. Appendix K contains the information the Committee received on the credit. The Committee also noted with some concern the possible constitutional issue surrounding the definition of "qualified grantee business".[3] After discussing the tax credit, the Committee acknowledged that the issue is one that needs more discussion and study than it could give it at this time. However, it also recognized the desire of taxpayers to know what the tax laws are from year to year and their need to be able to plan accordingly. Therefore the Committee recommends in Legislative Proposal 8 that the credit be extended for one year. The one-year extension will ensure that the matter will be revisited again during the 2003 long session where it can be more fully debated.

[2] Section 1(3) of Resolution 2001-36 provides that legislation implementing the recommendations of study commissions are eligible for consideration during the 2002 Session of the 2001 General Assembly.

[3] This issue is more fully explained in the summary of Legislative Proposal 8.

TAX COMPLIANCE

One of the principles of tax policy that the Revenue Laws Study Committee has consistently sought to achieve is ease of compliance for both the taxpayer and the tax collector. The Committee recognizes that taxpayers who do not comply with the tax laws create an unfair burden on those taxpayers who do comply. Legislative Proposal 7 would authorize the Division of Motor Vehicles to disclose to a local tax collector the social security number of an applicant for a driver's license to assist the collector in collecting delinquent property taxes due on motor vehicles.[4] Legislative Proposal 4 recommends three changes to the revenue laws to enhance the enforcement abilities of the Criminal Investigations Division of the Department of Revenue.

REVIEW OF VARIOUS STATE REVENUE LAWS

The Revenue Laws Study Committee is charged with 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.[5] Legislative Proposal 1 provides technical, clarifying, and conforming changes to the revenue laws and related statutes. Legislative Proposal 2 enhances uniformity in the taxation of telecommunications by conforming to the federal sourcing rules for mobile telecommunications and codifying the sourcing principles for other telecommunications services. These sourcing principles are the same as the

[4] This proposal was not introduced as a bill to the 2002 Session of the 2001 General Assembly.
[5] G.S. 120-70.106.

ones adopted by the Streamlined Sales Tax Project and approved by the 27 implementing states in March 2002. Legislative Proposal 3 recommends the following changes to the revenue laws at the request of the Department of Revenue: to codify the Department of Revenue's long-standing use of sales tax exemption certificates, to promote efficiency in the processing of sales tax returns, and to clarify the breadth of the sales tax exemption for certain agricultural substances. Legislative Proposal 5 makes several changes to the property tax laws, as recommended by the Department of Revenue and the North Carolina Association of Assessing Officers, to improve their efficiency and effectiveness.

REPORTS

The General Assembly authorized the Revenue Laws Study Committee to receive certain reports from the Department of Revenue and the Wireless 911 Board. Appendices L through Q contain the reports received by the Committee during this interim.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following eight recommendations to the 2002 Regular Session of the 2001 General Assembly. Each proposal is followed by an explanation and, if it has a fiscal impact, a fiscal note or memorandum indicating any anticipated revenue gain or loss resulting from the proposal.

LEGISLATIVE PROPOSAL #1

REVENUE LAWS TECHNICAL CHANGES

LEGISLATIVE PROPOSAL 1:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

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

SHORT TITLE:	Revenue Laws Technical Changes.
BRIEF OVERVIEW:	It makes technical and clarifying changes to the revenue laws and related statutes.
FISCAL IMPACT:	No impact.
EFFECTIVE DATE:	This proposal is effective when it becomes law.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S **D**

LEGISLATIVE PROPOSAL 1

SENATE DRS6808-LCxz-202 (04/23)

Short Title:	Revenue Laws Technical Changes.	(Public)
Sponsors:	Senators Hartsell; Clodfelter, Dalton, Hoyle, Kerr, and Webster.	
Referred to:		

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2001-264 reads as rewritten:

"**SECTION 3.** Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

SECTION 2. The introductory language of Section 13.(a) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(a)** G.S. ~~105-472(a)~~ 105-472 reads as rewritten:".

SECTION 3. This act is effective when it becomes law.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 1: REVENUE LAWS TECHNICAL CHANGES

BY: MARTHA HARRIS, BILL DRAFTING DIVISION

SUMMARY: ***Makes technical and clarifying changes to the Revenue Laws and related statutes, effective when it becomes law.***

Each year the Revenue Laws Study Committee recommends numerous technical and clarifying changes. This year, because of the late adjournment of the 2001 Session, electronic copies of the updated statutes are not available to use to draft the bill. Therefore, Legislative Proposal 1 contains only two technical and clarifying changes to the Session Laws. The changes to the statutes can be added in a committee substitute after the bill is introduced.

Section 1 of the bill clarifies S.L. 2001-264, An Act To Provide Uniform Penalties For Local Meals Taxes. That act made all local meals tax penalties uniform by applying the existing State sales and use tax penalty charges to meals taxes. This act was intended to improve tax administration by making the tax penalties for each local meals tax uniform. After the act became law, staff noticed that its language might not be sufficiently clear to assure that the penalties will be uniform in each jurisdiction. Section 1 of this bill adds language to clarify that additional or higher local penalties are repealed.

Section 2 of the act corrects a typographical error. Although Section 3(a) of S.L. 2001-427 purports to amend just subsection (a) of G.S. 105-427, it actually amends the entire statute. Section 2 of this bill conforms the law to accurately state that it amends the entire statute.

LEGISLATIVE PROPOSAL #2

CONFORM MOBILE TELECOMMUNICATIONS SOURCING

LEGISLATIVE PROPOSAL 2:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS SERVICES TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT AND TO CODIFY THE SOURCING PRINCIPLES FOR OTHER TELECOMMUNICATIONS SERVICES.

SHORT TITLE: Conform Mobile Telecommunications Sourcing.

BRIEF OVERVIEW: It conforms North Carolina's sourcing of mobile telecommunications services to the federal Mobile Telecommunications Sourcing Act and it codifies the sourcing rules for other telecommunications services.

FISCAL IMPACT: No fiscal impact.

EFFECTIVE DATE: Two of the sourcing principles become effective January 1, 2004. The remainder of the proposal becomes effective August 1, 2002, and applies to taxable services reflected on bills after August 1, 2002.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H **D**

LEGISLATIVE PROPOSAL 2

HOUSE DRH6393-RBxz-23 (04/29)

Short Title:	Conform Mobile Telecommunications Sourcing.	(Public)
Sponsors:	Representatives Allen; Buchanan, Hill, Holliman, Jarrell, Luebke, McComas, and Wainwright.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS SERVICES TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT AND TO CODIFY THE SOURCING PRINCIPLES FOR OTHER TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

…

(26a) Place of primary use. – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use."

SECTION 2. G.S. 105-164.3(27) reads as rewritten:

"(27) Prepaid telephone calling ~~arrangement.~~ Service. – A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of telecommunications service.

b. Must be paid for in advance.

c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.

d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis."

SECTION 3. G.S. 105-164.3(39) is repealed.

SECTION 4. G.S. 105-164.4(a)(4d) reads as rewritten:

"(4d) The sale or recharge of prepaid telephone calling ~~arrangements~~ service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. Prepaid telephone calling ~~arrangements~~ service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision ~~are~~ is not subject to tax as a telecommunications service.

~~Prepaid telephone calling arrangements are taxable at the point of sale instead of at the point of use. If the sale or recharge of a prepaid telephone calling arrangement does not take place at a retailer's place of business, the sale or recharge is considered to have taken place at one of the following:~~

~~a. The customer's shipping address, if an item of tangible personal property is shipped to the customer as part of the transaction.~~

~~b. The customer's billing address or, for mobile telecommunications service, the customer's service address, if no tangible personal property is shipped to the customer as part of the transaction.~~"

SECTION 5. G.S. 105-164.4B(a)(3) reads as rewritten:

"(a) Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

…

(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to

the first address or location listed in this ~~subsection~~ subdivision that is known to the seller:

a. The business or home address of the purchaser.

b. The billing address of the ~~purchaser.~~purchaser or, if the product is a prepaid telephone calling service that authorizes the purchase of mobile telecommunications service, the location associated with the mobile telephone number.

c. The address of the seller."

SECTION 6. G.S. 105-164.4C(a) reads as rewritten:

"(a) General. – The gross receipts derived from providing telecommunications service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). ~~Mobile telecommunications service is provided in this State if the customer's service address is in this State and the call originates or terminates in this State.~~Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services."

SECTION 7. G.S. 105-164.4C(b)(1) reads as rewritten:

"(b) Included in Gross Receipts. – Gross receipts derived from telecommunications service include the following:

(1) Receipts from ~~local, intrastate, interstate, toll, private, and mobile telecommunications service.~~flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.

…"

SECTION 8. G.S. 105-164.4C(c)(2) reads as rewritten:

"(c) Excluded From Gross Receipts. – Gross receipts derived from telecommunications service do not include any of the following:

…

(2) Telecommunications services that are resold as part of a prepaid telephone calling ~~arrangement.~~service.

…"

SECTION 9. G.S. 105-164.4C is amended by adding two new subsections to read:

"(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

(1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.

(2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:

a. The call both originates and terminates in this State.

b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.

(3) Postpaid. – A postpaid calling service is sourced in accordance with either of the following principles, at the election of the seller:

a. The principle set out in subdivision (a1)(2) of this section for call-by-call service.

b. The origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is authorized by a prepaid telephone calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included within the term 'charges for mobile telecommunications services' under the federal Mobile Telecommunications Sourcing Act.

(2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.

(3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section."

SECTION 10. G.S. 105-164.4C(e) reads as rewritten:

"(e) ~~Interstate~~ Private Line. – The gross receipts derived from ~~interstate~~ private telecommunications service are ~~taxable~~ sourced as follows:

(1) ~~One hundred percent (100%) of the charge imposed at each channel termination point in this State.~~If all the customer's channel

termination points are located in this State, the service is sourced to this State.

(2) ~~One hundred percent (100%) of the charge imposed for the total channel mileage between each channel termination point in this State.~~If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

(3) ~~Fifty percent (50%) of the charge imposed for the total channel mileage between the first channel termination point in this State and the nearest channel termination point outside this State.~~ If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.

b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points."

SECTION 11. G.S. 105-164.4C(h) reads as rewritten:

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

~~(1) Call center. - Defined in G.S. 105-164.27A.~~

~~(2) Interstate telecommunications service. – Telecommunications service that originates or terminates in this State, but does not both originate and terminate in this State, and is charged to a service address in this State.~~

~~(3) Intrastate telecommunications service. – Telecommunications service that both originates and terminates in this State.~~

~~(4) Local telecommunications service. – Telecommunications service that provides access to a local telephone network and enables a user to communicate with substantially everyone who has a telephone or radiotelephone station that is part of the local telephone network.~~

~~(5) Mobile telecommunications service. - Defined in G.S. 105-164.3.~~

~~(6) Private telecommunications service. - Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.~~

~~(7) Service address. - Defined in G.S. 105-164.3.~~

~~(8) Telecommunications service. - Defined in G.S. 105-164.3.~~

~~(9) Toll telecommunications service. - Any of the following:~~

~~a. A service for which there is a toll charge that varies in amount with the distance or elapsed transmission time of each individual communication.~~

~~b. A service that entitles the subscriber, upon payment of a periodic charge, determined as a flat amount or on the basis of total elapsed transmission time, to an unlimited number of communications to or from all or a substantial portion of those who have a telephone or radiotelephone station in an area outside the local telephone network.~~

(1) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

(2) Call center. – Defined in G.S. 105-164.27A.

(3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

(4) Place of primary use. – Defined in G.S. 105-164.3.

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid telephone calling service, except the exclusive use requirement.

(6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

SECTION 12. G.S. 105-467(b)(6) reads as rewritten:

"(6) The sales price of prepaid telephone calling ~~arrangements~~ service taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

SECTION 13. Subdivision (6) of the first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws reads as rewritten:

"(6) The sales price of prepaid telephone calling ~~arrangements~~ service taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

SECTION 14. G.S. 105-164.4C(a1)(3), as enacted by this act, reads as rewritten:

"(3) ~~Post-paid.~~Postpaid. – A ~~post-paid~~postpaid calling service is sourced ~~in accordance with either of the following principles, at the election of the seller:~~

~~a. The principle set out in subdivision (a1)(2) of this section for call-by-call service.~~

~~b. The~~

to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider."

SECTION 15. G.S. 62A-21(4) reads as rewritten:

"(4) "CMRS connection" means each mobile handset telephone number assigned to a CMRS customer with a ~~billing address~~ place of primary use in North Carolina."

SECTION 16. G.S. 105-164.4C(e)(4), as enacted by Section 10 of this act, and Section 14 of this act become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after January 1, 2004. The remainder of this act becomes effective August 1, 2002, and applies to taxable services reflected on bills dated after August 1, 2002.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 2: CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS

BY: CINDY AVRETTE, RESEARCH DIVISION

SUMMARY: This draft bill conforms North Carolina's sourcing of mobile telecommunications services to the federal Mobile Telecommunications Sourcing Act. It also codifies the sourcing rules for other telecommunications services. Two of the sourcing principles would become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after that date. The remainder of the bill would become effective August 1, 2002, and apply to taxable services reflected on bills dated after August 1, 2002.

CURRENT LAW: Last session, the General Assembly simplified the taxation of telecommunications services by providing one tax at one rate for all telecommunication services, including interstate telecommunications service. Under the law, mobile telecommunications is considered to be taxable in this State if the customer's service address is in this State and the call originates or terminates in this State. However, under the federal Mobile Telecommunications Act, mobile telecommunications service is taxable by the state of the customer's place of primary use, regardless of whether or not the call originates or terminates in the state. A mobile customer's service address and place of primary use are the same: the residential street address or the primary business street address of the customer that is within the licensed service area of the service provider. Therefore, it is the requirement that the call originate or terminate in the State that must be changed to conform to the federal mobile telecommunications sourcing rules.

BACKGROUND: "Sourcing" is the determination of the jurisdiction within which a transaction is considered to take place for tax purposes. Jurisdictions that tax interstate and international telecommunications generally follow the "*Goldberg* Rule", which is based on an Illinois tax that was upheld by the U.S. Supreme court in *Goldberg v. Sweet*, 488 US 252 (1989). Under the *Goldberg* Rule a telephone call is subject to a jurisdiction's tax if the call meets one of the following two criteria:

- It both originates and terminates in that jurisdiction.
- It originates *or* terminates in that jurisdiction *and* is charged to a service address in that jurisdiction.

Because of the complexity of identifying the source of mobile telecommunications, federal legislation was passed that takes effect of August 1, 2002, that sources mobile telecommunications transactions at the place of primary use, which is the same as the service address – the residential address or business premises of the purchaser.

Under the federal legislation, states could furnish service providers with a database[1] matching street addresses with taxing jurisdictions.[2] Service providers would be held harmless for any errors resulting from their use of the database. If a database is not provided for a state, then the service provider may determine the appropriate taxing jurisdiction by using an enhanced zip code[3] to assign each street address to a specific taxing jurisdiction in that state. Service providers would be held harmless from any tax liability that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction under this method. The accuracy of the method used is important to protect the tax base of local taxing jurisdictions. The hold harmless provision is important to service providers who provide service in a state with multiple taxing jurisdictions.

The Streamlined Sales Tax Project is working with the Telecommunications Industry on uniform provisions for sourcing as well as refund limitation provisions based upon the hold harmless provisions in the federal Mobile Telecommunications Sourcing Act. The Streamlined Sales Tax Project and the implementing states[4] have adopted principles for sourcing. The principles do not differ from North Carolina's current sourcing principles. This bill draft codifies those principles. The Streamlined Sales Tax Project has not yet completed its work on the refund limitation provisions. Since North Carolina does not have multiple taxing jurisdictions[5], the need for these provisions is not imminent. Therefore, this bill draft does not include any provisions on this issue.

6

BILL ANALYSIS: This bill draft conforms North Carolina's sourcing of mobile telecommunications to the federal Mobile Telecommunications Sourcing Act and codifies the sourcing principles adopted by the Streamlined Sales Tax Project and the 27 implementing states. Following is a section-by-section analysis of the draft bill:

Sections 1, 3, and 15::	Replace the term "service address" and "billing address" with the term "place of primary use" because that is the terminology used in the federal Mobile Telecommunications Sourcing Act.
Sections 2, 8, 12, and 13:	Change the term "prepaid telephone calling arrangement" to the term "prepaid telephone calling service" so that the terminology is consistent with the other forms of telecommunication services.

[1] The Multi-State Tax Commission and the Federation of Tax Administrators are currently involved in a project to specify the format of the database.

[2] Some states allow local governments to impose a tax on telecommunications services, resulting in multiple taxing jurisdictions within a state.

[3] The level of accuracy for the nine-digit zip code ranges from 85% to 99%. A more accurate system may be developed using a geographic mapping system. The federal law gives states the ability to develop a more accurate system if it so chooses.

[4] There are 27 states that have enacted legislation based on either the Uniform Sales and Use Tax Administration Act or the Simplified Sales and Use Tax Administration Act: AR, FL, IL, IN, KY, LA, ME, MD, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, TN, TX, UT, WA, WI, WV, WY, and the District of Columbia.

[5] North Carolina distributes a portion of the State-imposed telecommunications tax to the cities.

Sections 4 and 5:	Prepaid telephone calling services are taxed as tangible personal property, not as a telecommunications service. Section 4 removes the sourcing language from the statute that sets the sales tax rates and Section 5 modifies the sourcing principles that apply to tangible personal property to accommodate the taxation of prepaid telephone calling services.
Section 6:	Deletes the sentence that sources mobile telecommunications based on the call originating or terminating in this State because it conflicts with the sourcing principle in the federal Mobile Telecommunications Sourcing Act. It also specifies that mobile telecommunications services be taxed in accordance with federal law. This reference alerts the reader that there is applicable federal law on this issue.
Sections 7 and 11:	Under the federal Mobile Telecommunications Sourcing Act and the Streamlined Sales Tax Project, telecommunications service is sourced based on the type of service provided rather than the type of call. The bill draft defines the different types of services and repeals the terms associated with the types of calls.
Sections 9 and 10:	Set forth the mobile telecommunications sourcing principle in the federal Mobile Telecommunications Sourcing Act and they codify the principles currently used by the State to source other telecommunications services. Section 10 rewrites the sourcing principles for private telecommunications service in a more understandable format and it adds a sourcing principle that is not currently applicable to private lines in the State, but may be applicable in the future. The principles codified in the bill are the same principles adopted by the Streamlined Sales Tax Project and the implementing states in March of 2002. Under the bill draft, at the request of the telecommunications industry, the new sourcing principle applicable to private telecommunications service does not become effective until January 1, 2004.
Sections 9 and 14:	Under the Streamlined Sales Tax Project, postpaid calling service will be sourced based on the origination point of the telecommunications signal as first identified by the seller's telecommunications system. However, not every company in the telecommunications industry has the capability to determine the origination point of the signal. The bill draft gives the seller two options to source postpaid calling service until the year 2004; at which point the seller must source based on the origination point of the telecommunications signal.
Section 16:	At the request of the telecommunications industry, two of the sourcing principles in the bill draft would become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after that date. The remainder of the bill would become effective August 1, 2002, and apply to taxable services reflected on bills dated after that date; the August 1, 2002, effective date corresponds with the effective date of the federal act.

LEGISLATIVE PROPOSAL #3

REVENUE ADMINISTRATIVE CHANGES

LEGISLATIVE PROPOSAL 3:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

SHORT TITLE: Revenue Administrative Changes.

BRIEF OVERVIEW: This proposal makes the following changes and clarifications in the tax laws:

- It clarifies that the sales and use tax exemption for certain agricultural substances does not include any equipment or devices used to apply those substances.
- It changes the due date of quarterly sales tax returns from the 15th of a month to the last day of a month to enable the Department to spread the processing work more evenly throughout the month.
- It changes the underpayment penalty calculation for semimonthly sales tax payers to conform to the requirements of the Streamlined Sales Tax Project.
- It clarifies the use of sales and use tax exemption certificates.

FISCAL IMPACT: Insignificant.

EFFECTIVE DATE: The change in the due date for quarterly sales tax returns becomes effective October 1, 2002. The changes in the underpayment penalty calculation for semimonthly sales tax payers become effective July 1, 2002. The remainder of this proposal is effective when it becomes law.

A copy of the proposed legislation, bill analysis, and fiscal memorandum begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H **D**

LEGISLATIVE PROPOSAL 3

HOUSE DRH9407-SVz-11 (04/23)

Short Title:	Revenue Administrative Changes.	(Public)
Sponsors:	Representatives Holliman; Allen, Buchanan, Hill, Jarrell, Luebke, and Wainwright.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13(2a) reads as rewritten:

"(2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial ~~purposes:~~purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.
b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
c. Defoliants for use on cotton or other crops.
d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops."

SECTION 2. G.S. 105-164.16(b) reads as rewritten:

"(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the ~~15th~~last day of the month following the end of the quarter."

SECTION 3. G.S. 105-164.16(b2) reads as rewritten:

"(b2) Semimonthly. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.

A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety-five percent (95%) of the ~~amount due for each semimonthly payment period~~ lesser of the following and includes the underpayment with the monthly return for those semimonthly payment ~~periods.~~periods:

(1) The amount due for each semimonthly payment period.

(2) The average semimonthly payment for the prior calendar year."

SECTION 4. Part 5 of Article 5 of Chapter 105 is amended by adding a new section to read:

"**§ 105-164.28A. Other exemption certificates.**

(a) Authorization. – The Secretary may require a person who purchases tangible personal property that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the property to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases tangible personal property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of resale. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of resale."

SECTION 5. Section 2 of this act becomes effective October 1, 2002, and applies to taxes levied on or after that date. Section 3 of this act becomes effective July 1, 2002, and applies to payments due on or after that date. The remainder of this act is effective when it becomes law.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 3: REVENUE ADMINISTRATIVE CHANGES

BY: TRINA GRIFFIN, RESEARCH DIVISION

SUMMARY: ***This bill draft makes the following changes and clarifications in the tax laws:***

- ***It clarifies that the sales and use tax exemption for certain agricultural substances does not include any equipment or devices used to apply those substances.***
- ***It changes the due date of quarterly sales tax returns from the 15th of a month to the last day of a month to enable the Department to spread the processing work more evenly throughout the month.***
- ***It changes the underpayment penalty calculation for semimonthly sales tax payers to conform to the requirements of the Streamlined Sales Tax Project.***
- ***It clarifies the use of sales and use tax exemption certificates.***

CURRENT LAW & ANALYSIS:

I. Clarifying the Exemption for Certain Agricultural Substances

CURRENT LAW: Included among the agricultural group of sales and use tax exemptions is an exemption for plant growth inhibitors, regulators, or stimulators when purchased for use on plants held or produced for commercial purposes. This exemption was at issue in a recent North Carolina Court of Appeals case, *American Ripener Company, Inc. v. Secretary of Revenue*. In this case, the plaintiff manufactured and sold ethylene concentrate, a plant growth regulator or stimulator that controls the speed of the ripening of fruits and vegetables. The plaintiff also manufactured, sold, and leased generators used to control the release of the ethylene gas. The plaintiff challenged the assessment of sales tax on its sales of ethylene and the assessment of use tax for its generators and replacement parts for its generators. The Department argued that the exemption was not intended to include any hardware or machinery, such as generators, used to apply the exempted substances. Nevertheless, the Court held that since the generators were used to control the release of ethylene gas and to regulate the speed of the ripening of fruits and vegetables, they were plant growth regulators and stimulators and, therefore, exempt from the sales and use tax. The Department's petition for review by the North Carolina Supreme Court was denied. The Department has recommended amending this exemption to clarify that it does not apply to any equipment or devices used to dispense the substances listed in the exemption.

PROPOSAL: G.S. 105-164.13(2a) exempts the following from sales and use tax when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:

- Remedies, vaccines, medications, litter materials, and feeds for animals.
- Rodenticides, insecticides, herbicides, fungicides, and pesticides.
- Defoliants for use on cotton or other crops.
- Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

Section 1 of the proposal clarifies that only these substances, and not any equipment or devices used to administer, release, apply, or otherwise dispense these substances, are exempt from the sales and use tax.

II. Due Date for Quarterly Sales Tax Returns

CURRENT LAW: Quarterly sales tax returns are due on the 15th of a month. In 2001, the General Assembly lowered the threshold for monthly payments of withheld taxes from $500 to $250. Monthly withholding returns are due on the 15th of the month, the same day as monthly and quarterly sales and use tax returns. As a result of the monthly threshold change, approximately 25,000 employers moved from a quarterly to a monthly filing status. The Department now receives 25,000 more returns in eight of the twelve months of the year than it was receiving prior to the change. Therefore, the Department has recommended changing the due date of quarterly sales tax returns from the 15th of a month to the end of the month to enable the Department to spread the work more evenly throughout the month. Currently, there are 91,000 quarterly sales tax filers.

PROPOSAL: Section 2 of the proposal changes the due date for quarterly sales tax returns from the 15th of a month to the end of a month. This change would make the due date for quarterly sales tax returns consistent with the due date for quarterly withholding tax returns. This change would not impact the timing of local sales and use tax distributions, nor would it shift any funds from one fiscal year to the next.

III. Underpayment Penalty Calculation for Semimonthly Sales Tax Payers

CURRENT LAW: A taxpayer who is consistently liable for at least $10,000.00 a month in State and local sales and use taxes must pay the tax twice a month and file a return on a monthly basis. A payment is required for each semimonthly period. The first semimonthly payment covers the period from the first day of the month through the 15th day of the month, and the second semimonthly payment covers the period from the 16th day of the month through the last day of the month. The

monthly return covers both semimonthly payment periods with any additional amount due and is due to be filed by the 20th day of the following month. A taxpayer is not subject to interest or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least 95% of the amount due for that payment period and includes the underpayment with the monthly return for both payment periods.

In 2000, the General Assembly enacted legislation to enable North Carolina to participate in the Streamlined Sales Tax Project, which is designed to simplify and modernize sales and use tax administration. There are certain requirements that each state must adopt in order to participate in the project. One requirement with regard to the remittance of funds is that if the State requires more than one remittance per return, the amount of the additional remittance must be determined through a calculation method rather than actual collections. Since semimonthly sales tax payers are required to send two remittances per month with one monthly return, the Department has recommended amending the underpayment penalty calculation for semimonthly sales tax payers which would provide an additional method of calculating their estimated tax liability and thus conform to the requirements of the Streamlined Sales Tax Project.

PROPOSAL: Section 3 of the proposal amends the method for calculating the underpayment penalty for semimonthly sales tax payers. Neither interest nor penalties would apply to the underpayment of sales tax remitted on a semimonthly basis if the taxpayer timely pays at least 95% of the lesser of the following:

- The amount due for the semimonthly payment period; or
- The average semimonthly payment for the prior calendar year.

Just as under the current law, the taxpayer must also include the underpayment with the monthly return for those semimonthly payment periods.

IV. Use of Exemption Certificates

CURRENT LAW: The Department of Revenue administers many of the sales and use tax exemptions and preferential rates targeted at certain industries, such as farming and manufacturing, through the use of an exemption certificate. The statutes do not address exemption certificates, however, except in the penalty provisions in G.S. 105-236(5a), which authorizes the Secretary to assess a penalty for the misuse of an exemption certificate. The Department has recommended that the practice of using exemption certificates be incorporated into the statutes to avoid any questions about the ability of taxpayers to claim exemptions through this method.

PROPOSAL: Section 4 of the proposal would codify a longstanding practice of the Department which requires that a purchaser of tangible personal property that is exempt from tax or subject to a preferential rate of tax obtain an exemption certificate from the Department in order to receive the exemption or preferential rate.

EFFECTIVE DATES: The section changing the due date for quarterly sales tax returns (Section 2) would become effective on October 1, 2002, and would apply to taxes levied on or after that date. The section changing the underpayment penalty calculation for semimonthly sales tax payers (Section 3) would become effective July 1, 2002, and would apply to payments due on or after that date. The remainder of the act would become effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: **April 30, 2002**

TO: Revenue Laws Study Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Revenue Administrative Changes

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	Potential Revenue Change – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Section 2 and 3 (quarterly sales tax returns) become effective October 1, 2002 and applies to taxes levied on or after that date. The remainder of the act becomes effective when law.

BILL SUMMARY: This proposal includes several changes recommended by the North Carolina Department of Revenue. Section 1 clarifies that equipment used to dispense plant growth inhibitors is not exempt from sales tax. Section 2 changes the due date for quarterly sales tax returns from the 15th of the month to the last day of the month, following the end of the quarter. Section 3 changes the underpayment penalty calculation for semimonthly taxpayers to conform to the Streamlined Sales Tax Project. Section 4 clarifies the use of sales and use tax exemption certificates.

ASSUMPTIONS AND METHODOLOGY:

Section 1: This proposal is a result of a North Carolina Court of Appeals decision. In American Ripener Co. Inc. v. Muriel K. Offerman, Secretary of Revenue, the court considered the application of state sales taxes to a plant growth regulator or stimulator which controls the ripening of fruits and vegetables (ethylene), as well as the equipment used to deliver that chemical. Tax on replacement parts was also an issue. The court held that all of these items are exempt from sales and use tax under G.S. 105-164.13(2) and G.S. 105-164.13 (2a) which exempts "plant growth inhibitors, regulators, or stimulators for agriculture including systematic and contact or other sucker control agents for tobacco and other crops". The court also ruled that the generators and associate parts are also inhibitors and are therefore exempt from sales tax. The proposal effectively amends G.S. 105-164.13(2a) to make the equipment and parts associated with this gas treatment subject to sales and use taxes. (The Department had previous assumed all these items were taxable). In making its ruling the court effectively reduced sales tax revenue. The bill would restore at least some of that revenue to the General Fund. As such, the bill in and of itself would create a small revenue gain. However, Fiscal Research is unable to create an exact estimate of the value of ethylene delivery parts and equipment. As a result, no estimate is possible on this portion of the proposal.

Section 2: Currently the Department of Revenue receives monthly withholding returns, monthly sales tax returns, and quarterly sales tax returns on the 15th of the month. On the 15th of March, April, September, and October income tax returns are due as well. Shifting the due date of quarterly sales and use tax returns from the 15th of the month to the end of the month will create a more even distribution of work in the Department. Because the payments are due in the month following the end of the quarter (October, February, April, and July) the shift will not move any revenue from one fiscal year to the next. Some loss of interest on the payments or "float" will occur. However, because of the relatively small sums of money involved, the Department expects the loss to be minimal.

Section 3: This section changes the calculation of penalty for underpayment by semimonthly sales tax payers. Under current law the taxpayer must remit at least 95% of the amount due for each semimonthly payment period. This proposal allows the taxpayer to remit the lesser of this amount or the average semimonthly payment for the prior calendar year. Clearly this proposal will result in some loss of penalty revenue. However, no data is available to determine the magnitude of the loss. The Department expects the loss to be slight.

Section 4: Historically the Department of Revenue has issued exemption certificates to taxpayers in certain exempted industries to facilitate tax administration. However, there is no reference to exemption certificates in the statutes, except as it relates to penalties for misuse of such a certificate. This proposal would codify the practice of issuing exemption certificates. Since the proposal is only codifying the existing practice of the Department, no fiscal impact is expected.

LEGISLATIVE PROPOSAL #4

REVENUE LAWS ENFORCEMENT ENHANCEMENTS

LEGISLATIVE PROPOSAL 4:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO IMPROVE THE ENFORCEMENT OF TAX LAWS BY CRIMINALIZING OR INCREASING THE PENALTY FOR CERTAIN FORMS OF TAX FRAUD AND BY ALLOWING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION TO LAW ENFORCEMENT AGENCIES.

SHORT TITLE: Revenue Laws Enforcement Enhancements.

BRIEF OVERVIEW: This proposal makes three substantive changes to the revenue laws:

- It allows for enhanced punishment when an income tax return preparer aids or assists I the filing of false or fraudulent documents with the Department of Revenue.
- It creates an offense for fleecing taxpayers.
- It allows the Department of Revenue to share information concerning the commission of an offense with appropriate state or federal law enforcement agencies.

FISCAL IMPACT: No fiscal impact.

EFFECTIVE DATE: The criminal offenses created by this proposal become effective December 1, 2002, and apply to actions that are committed on or after that date. The remainder of this proposal is effective when it becomes law.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S **D**

LEGISLATIVE PROPOSAL 4

SENATE DRS8708-LYz-165A (04/16)

Short Title:	Revenue Laws Enforcement Enhancements.	(Public)
Sponsors:	Senators Clodfelter, Dalton, Hartsell, Hoyle, and Kerr.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF TAX LAWS BY CRIMINALIZING OR INCREASING THE PENALTY FOR CERTAIN FORMS OF TAX FRAUD AND BY ALLOWING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION TO LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

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

…

(4) Income Tax Return Preparer. – Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by Article 4 of this Chapter or any claim for refund of tax imposed by Article 4 of this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund

for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment."

SECTION 2. G.S. 105-236(9a) reads as rewritten:

"(9a) Aid or Assistance. – Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, ~~shall be~~is guilty of a ~~Class H felony.~~felony as follows:

a. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony.

b. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

c. If the person who commits an offense under this subdivision is not covered under sub-subdivision a. or b. of this subdivision, the person is guilty of a Class H felony."

SECTION 3. G.S. 105-159.1(e) reads as rewritten:

"(e) ~~A~~ An ~~paid preparer of tax returns~~income tax return preparer may not designate on a return that the taxpayer does or does not desire to make the political contribution authorized in this section unless the taxpayer or the taxpayer's spouse has consented to the designation."

SECTION 4. G.S. 105-236 is amended by adding a new subdivision to read:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

…

(10b) Misrepresentation Concerning Payment. – A person who receives money from a taxpayer with the understanding that the money is to be remitted to the Secretary for application to the taxpayer's tax

liability and who willfully fails to remit the money to the Secretary is guilty of a Class F felony."

SECTION 5. G.S. 105-259(b) is amended by adding a new subdivision to read:

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

…

"(15a) To furnish to the head of the appropriate State or federal law enforcement agency information concerning the commission of an offense under the jurisdiction of that agency discovered by the Department during a criminal investigation of the taxpayer."

SECTION 6. Sections 1 through 4 of this act become effective December 1, 2002, and apply to actions that are committed on or after that date. The remainder of this act is effective when it becomes law.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 4: REVENUE LAWS ENFORCEMENT ENHANCEMENTS

BY: CANAAN HUIE, BILL DRAFTING DIVISION

SUMMARY: This draft makes three substantive changes to the revenue laws. First, it allows for enhanced punishment when an income tax return preparer aids or assists in the filing of false or fraudulent documents with the Department of Revenue. Second, it creates an offense for fleecing taxpayers. Third, it allows the Department of Revenue to share information concerning the commission of an offense with appropriate state or federal law enforcement agencies.

CURRENT LAW AND BILL ANALYSIS:

Sections 1-3. This draft provides for enhanced punishment when an income tax return preparer aids or assists in the filing of false or fraudulent documents with the Department of Revenue. Under current law, it is a Class H felony to aid, assist, procure, counsel, or advise the preparation, presentation, or filing of a return, affidavit, claim, or other document that is fraudulent or false as to any material matter. Over the past few years, the Department has noticed an increase in the number of fraudulent return cases involving an income tax return preparer. According to the Department, these cases generally involve income tax return preparers that intentionally inflate the itemized deductions claimed on a return or include fictitious business losses on the return. This fraud is carried out in order to reduce taxable income, thereby reducing tax liability. The Department has also noticed an increase in the number of fictitious returns. These are returns that are based on fictitious wage and tax statements.

Under this draft, an income tax return preparer who aids or assists in the filing of false or fraudulent documents would be guilty of a Class F felony. If the total amount of tax fraudulently avoided in one taxable year on all returns exceeds one hundred thousand dollars ($100,000), the income tax return preparer would be guilty of a Class felony. These punishments are the same as the punishments for embezzlement under Article 18 of Chapter 14 of the General Statutes.

This draft incorporates the definition of income tax return preparer used under the Code. In addition, this draft makes a conforming change in G.S. 105-159.1(e) to incorporate this definition.

These sections would become effective December 1, 2002, and would apply to criminal offenses committed on or after that date.

Section 4. This provision would make it a Class F felony for a person to receive money from a taxpayer with the understanding that the person would remit the

money to the Secretary for application on a tax liability and then willfully fail to remit the money to the Secretary. The Department reports that several times a year they will have a situation where an accountant receives money from a taxpayer to satisfy a sales or withholding tax liability. The accountant then files a fraudulent return showing reduced or zero tax due and then pockets the taxpayer's money. Although the Department can and does bring charges against the account for filing a fraudulent return, the taxpayer still owes the money that he or she has lost. The taxpayer must then get the local district attorney to file embezzlement charges. The Department reports that the district attorneys would prefer that the Department handle this since it involves taxes and since the Department is already involved. The penalty is the same as for embezzlement totaling less than one hundred thousand dollars ($100,000).

This section would become effective December 1, 2002, and would apply to criminal offenses committed on or after that date.

Section 5. This provision would allow the Department of Revenue to share information it discovers during a criminal investigation of a taxpayer with appropriate state or federal law enforcement agencies. Under current law, the Department may provide information concerning a tax imposed by Article 2A, 2C, or 2D[1] to law enforcement agencies. However, the Criminal Investigation Division of the Department occasionally discovers evidence of criminal activity unrelated to the taxes imposed in those Articles. Under current law, the Department is not allowed to disclose that information to law enforcement.

This provision has been changed since the May 2 meeting of the Revenue Laws Study Committee. In response to concerns raised by Senator Webster, the Department of Revenue requested that disclosure only be allowed when the information is discovered during a criminal investigation of the taxpayer. This significantly limits the situations in which the Department could share information to those in which there is real evidence obtained by a trained law enforcement officer conducting an independent investigation.

This section would become effective when it becomes law.

[1] These Articles deal with the tobacco products tax, alcoholic beverage license and excise taxes, and unauthorized substances taxes.

LEGISLATIVE PROPOSAL #5

AMEND PROPERTY TAX LAWS

LEGISLATIVE PROPOSAL 5:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.

SHORT TITLE: Amend Property Tax Laws.

BRIEF OVERVIEW: This proposal makes the following changes to the property tax laws:

- It authorizes tax collectors to impose a $25 returned check fee or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.
- It sets out the procedure and time limit for appeals of personal property value, situs, or taxability.
- It clarifies that the board of equalization and review may continue to meet after it adjourns to hear and decide appeals relating to personal property.
- It changes the effective date of the change in the definition of "real property" as amended in S.L. 2001-506 (HB 253).
- It allows local agencies to impose a $15 local collection assistance fee on each local agency debt collected through setoff.

FISCAL IMPACT: No General Fund impact. Insignificant local revenue impact.

EFFECTIVE DATE: The establishment of a $15 local collection assistance fee becomes effective January 1, 2003. The remainder of this proposal becomes effective for taxes imposed for taxable years beginning on or after July 1, 2002.

A copy of the proposed legislation, bill analysis, and fiscal memorandum begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H **D**

LEGISLATIVE PROPOSAL 5

HOUSE DRH1242-LAfz-6 (04/23)

Short Title:	Amend Property Tax Laws.	(Public)
Sponsors:	Representatives Hill; Allen, Buchanan, Holliman, Jarrell, Luebke, and Wainwright.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-357(b)(2) reads as rewritten:

"(2) Penalty. – In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is twenty-five dollars ($25.00) or ten percent (10%) of the amount of the check, whichever is greater, subject to a ~~minimum of one dollar ($1.00) and a~~ maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

SECTION 2. G.S. 105-317.1 is amended by adding a new subsection to read:

"(c) A taxpayer who owns personal property taxable in the county may appeal the value, situs, or taxability of the property within 30 days after the date of the initial

notice of value. If the assessor does not give separate written notice of the value to the taxpayer at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal property. The notice must contain a statement that the taxpayer may appeal the value, situs, or taxability of the property within 30 days after the date of the notice. Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the opportunity to present any evidence or argument regarding the value, situs, or taxability of the property. Within 30 days after the conference, the assessor must give written notice to the taxpayer of the assessor's final decision. Written notice of the decision is not required if the taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's final decision to request review of that decision by the board of equalization and review or, if that board is not in session, by the board of county commissioners. Unless the request for review is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be followed."

SECTION 3. G.S. 105-322(g)(5) reads as rewritten:

"(5) Duty to Change Abstracts and Records After Adjournment. – Following adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this subsection, the board may continue to meet to carry out the following duties:

a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).

c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation.

d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c)."

SECTION 4. Section 4 of S.L. 2001-506 reads as rewritten:

"**SECTION 4.** Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, ~~2002.~~2004. Sections 2 and 3 of this act become effective January 1, 2002, and apply to manufactured home title cancellations and to declarations of intent, deeds, deeds of trust, and other instruments recorded after that date. The remainder of this act is effective when it becomes law."

SECTION 5.(a) G.S. 105A-2 reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

(1) Claimant agency. – Either of the following:
  a. A State agency.
  b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).
(2) Debt. – Any of the following:
  a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
  b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
  c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.
  d. Reserved for future codification purposes.
  e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
    1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
    2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
    3. A successor program of one of these programs.
(3) Debtor. – An individual who owes a debt.
(4) Department. – The Department of Revenue.
(5) Reserved.
(6) Local agency. – A county, to the extent it is not considered a State agency, or a municipality.
(7) Net proceeds collected. – Gross proceeds collected through setoff against a debtor's refund minus the collection assistance ~~fee retained by the Department.~~fees provided in G.S. 105A-13.
(8) Refund. – An individual's North Carolina income tax refund.
(9) State agency. – Any of the following:
  a. A unit of the executive, legislative, or judicial branch of State government.
  b. A county, to the extent it administers a program supervised by the Department of Health and Human Services or it

operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act."

SECTION 5.(b) G.S. 105A-5 reads as rewritten:

"**§ 105A-5. Local agency notice, hearing, and decision.**

(a) Prerequisite. – A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. – A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt and that the agency intends to apply the debtor's refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local agency, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt.

(c) Administrative Review. – A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. – A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt.

(e) Return of Amount Set Off. – If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. That portion of the

amount returned that reflects the collection assistance ~~fee~~ fees must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance ~~fee~~ fees ~~retained by the Department~~provided in G.S. 105A-13 may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 5.(c) G.S. 105A-13 reads as rewritten:

"**§ 105A-13. Collection assistance fees.**

(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. ~~If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt.~~ The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Repealed.

(c) Local Debts. – To recover the costs incurred by local agencies in submitting debts for collection under this Chapter, a local collection assistance fee of fifteen dollars ($15.00) is imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The local collection assistance fee does not apply to child support debts.

(d) Priority. – If the Department is able to collect only part of a debt through setoff, the collection assistance fee provided in subsection (a) of this section has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt."

SECTION 6. Sections 1 and 4 of the act are effective when they become law. Sections 5(a), 5(b), and 5(c) become effective January 1, 2003. The remaining sections are effective for taxes imposed for taxable years beginning on or after July 1, 2002.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 5: AMEND PROPERTY TAX LAWS

BY: MARTHA WALSTON, FISCAL RESEARCH DIVISION

SUMMARY: ***The Proposal makes several changes to the property tax laws as recommended by the North Carolina Association of Assessing Officers and the Department of Revenue:***

- ***Authorizes tax collectors to impose a $25 returned check fee or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.***
- ***Sets out the procedure and time limit for appeals of personal property value, situs, or taxability.***
- ***Clarifies that the board of equalization and review may continue to meet after it adjourns to hear and decide appeals relating to personal property.***
- ***Changes the effective date of the definition of "real property" as amended in S.L. 2001-506 (HB 253).***
- ***Amends the Setoff Debt Collection Act in Chapter 105A of the General Statutes to allow local agencies to impose a $15 local collection assistance fee on each local agency debt collected through setoff.***

BILL ANALYSIS: Section 1 of the Proposal amends G.S. 105-357(b) regarding the penalty imposed on a worthless check given to pay taxes. Current law authorizes the tax collector to impose 10% of the amount of the check, subject to a minimum of $1 and maximum of $1,000. The proposal authorizes the tax collector to impose $25 or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.

Section 2 of the Proposal sets out the procedure and time limit for appeals of the value, situs, or taxability of personal property. The current statutory framework is oriented toward appeals of real estate tax values and does not specifically address appeals of personal property. Consequently, counties use different procedures and time limits for appeals of personal property. The proposal amends G.S. 105-317.1 to include the following:

- The appeal must be within 30 days after the date of the initial notice of value of the personal property. The tax bill will serve as notice of value if a separate written notice of value is not sent. The notice must set out the 30-day limit.
- Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer and allow the taxpayer to present evidence or argument.

- Within 30 days after the conference, the assessor must give written notice of the assessor's decision. Notice is not required if the taxpayer accepts the value, situs, or taxability of the property.
- Within 30 days of notice of the assessor's final decision, the taxpayer may request review by the board of equalization and review or the board of county commissioners.[1]

Section 3 of the Proposal authorizes a county board of equalization and review to meet after its adjournment to hear appeals relating to personal property. Last session, the Revenue Laws Study Committee recommended that a county board of equalization and review be given the authority to meet after its adjournment date to hear appeals relating to motor vehicle property taxes, discoveries, and property reviewed annually to determine its continued qualification for exemption or exclusion. Cabarrus, Lincoln, and Stokes Counties already had this authority under local acts. The recommendation was enacted in S.L. 2001-139.

Section 4 of the Proposal changes an effective date in S.L. 2001-506. Last session, the General Assembly made several changes to the laws regarding the classification of a manufactured home as real property. One of these changes was to amend the definition of "real property" in G.S. 105-273(13) of the property tax laws, by removing the requirement that a manufactured home have multiple sections to be considered real property. The amendment also clarified that a manufactured home would be considered personal property if it did not meet the following statutory conditions: has the moving hitch, wheels, and axles removed, and is placed upon a permanent foundation on land owned by the owner of the manufactured home. This definition change became effective for taxable years beginning on or after July 1, 2002. The Proposal moves the effective date to taxable years beginning on or after July 1, 2004. The assessors have not been able to determine whether the manufactured homes in their county meet this definition and have requested an extension of the effective date.

Section 5 of the Proposal amends the Setoff Debt Collection Act in Chapter 105A of the General Statutes to authorize the charge of a $15 collection assistance fee on each local agency debt collected through setoff. The Act currently authorizes the Department of Revenue to impose a collection assistance fee of no more than $15 on overdue tax debts collected through setoff against the debtor's refund. The Act also provides for optional usage of the Act by a local agency (county) that is owed a debt. The local agency must submit the debt through one of the following:

[1] The original draft gave the assessor 15 days to give written notice of the assessor's decision and gave the taxpayer 15 days to request review of this decision by the board of equalization and review. Mike Pate, a member of the Revenue Laws Study Committee, has raised concerns that 15 days may not be sufficient time to give notice in some cases. The North Carolina Association of Assessing Officers and the Property Tax Division of the Department of Revenue have agreed to increase the period for notice from 15 to 30 days.

1. A clearinghouse that is established pursuant to an interlocal agreement and has agreed to submit debts on behalf of any requesting local agency.
2. The North Carolina League of Municipalities.
3. The North Carolina Association of County Commissioners.

The Proposal amends the Setoff Debt Collection Act to require the Department of Revenue to collect a $15 collection assistance fee on each local agency debt collected through setoff. The fee must be remitted by the Department to the clearinghouse that submitted the debt. Last year the N.C. Association of County Commissioners and the League of Municipalities entered into an interlocal agreement to establish a clearinghouse for local debt collection. The clearinghouse is registered with the Department of Revenue as the North Carolina Local Government Debt Setoff Clearinghouse. The Association and League have also contracted with a third party to process and compile the local debts. The $15 collection assistance fee will be used to pay for the costs of collecting these debts.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: **May 13, 2002**

TO: Revenue Laws Study Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Amend Property Tax Laws

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	No General Fund Impact				
Local Governments	Potential Revenue Increase – See Assumptions and Methodology				
Setoff Debt Collection Clearinghouse	Potential Revenue Increase – See Assumptions and Methodology				
EXPENDITURES					
Local Governments	Potential Cost Savings – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, North Carolina Department of Revenue, Property Tax Division.

EFFECTIVE DATE: Sections 1 (worthless checks) and 4 (manufactured homes) are effective when they become law. The remainder becomes effective for taxes imposed on taxable years beginning on or after July 1, 2002.

BILL SUMMARY: This proposal makes several changes to the property tax law and is recommended by the Revenue Laws Study Committee, the North Carolina Association of Assessing Officers and the North Carolina Department of Revenue.
Section 1 addresses the returned check fee charged by tax collectors. Under current statute the collector can impose a 10% fee for returned checks, with a minimum of $1.00 and a maximum of $1,000. The proposal increases the minimum fee to $25.00. The 10% rate and the $1,000 maximum provisions are retained. Section 2 defines the procedures and time limits surrounding a property tax appeal of personal property taxes. Section 3 authorizes local boards of equalization and review to meet after their adjournment date to hear personal property appeals. Section 4 changes the effective date of several property tax changes made last session in regards to manufactured homes. Section 5 authorizes the Department of Revenue to collect a $15 collection assistance fee on each local debt collected through the Setoff Debt Collection program. The funds are to be forwarded to the North Carolina Local Government Debt Setoff Clearinghouse.

ASSUMPTIONS AND METHODOLOGY:

Section 1: Because the proposal increases the minimum amount charged by tax collectors for returned checks, local fee revenues will increase. Fiscal Research is unable to offer an exact estimate of the increase, although it is expected to be relatively small.

Section 2: The statutory procedure for property tax appeals is oriented towards real estate and does not specifically address how to handle motor vehicle appeals. As a result, counties use a variety of procedures and timelines. Because the bill only clarifies procedure, it is not expected to have a fiscal impact.

Section 3: This section is not expected to have a fiscal impact as it merely extends the time limit for appeals.

Section 4: During the 2001 session several changes were made regarding the classification of manufactured homes for property tax purposes. In particular, the statute laid out specific qualifications for a manufactured home to be considered real property. This included having multiple sections, being placed on a permanent foundation, and having several items (hitch, wheels, axles) removed from the home. The effective date for the changes was July 1, 2002. Since the legislation passed, many assessors have been unable to determine if all the manufactured homes in the county meet the new criteria. As a result, they are asking that the current effective date be delayed until July 1, 2004. Because some properties would continue to be valued as personal property for two extra years, some impact is expected on property taxes. However, Fiscal Research is unable to make a reliable estimate of the impact during that period.

Section 5: Under current law, counties and cities can submit debts for collection to the Department of Revenue as long as the request is forwarded through the League of Municipalities, the County Commissioners Association, or a clearinghouse established

through interlocal agreement. However, when the government submits the debt for collection, they must absorb the $15 fee themselves. The proposal authorizes the Department of Revenue to collect the $15 fee from the delinquent payer. This fee does not apply to child support. The proposal will reduce the cost of debt collection for local governments, and will likely increase program usage. However, no firm estimate is available on the total financial impact for local governments.

LEGISLATIVE PROPOSAL #6

AMEND USE VALUE STATUTES

LEGISLATIVE PROPOSAL 6:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO AMEND THE PRESENT-USE VALUE STATUTES.

SHORT TITLE: Amend Use Value Statutes.

BRIEF OVERVIEW: This proposal makes the following changes to the present-use value statutes:

- It changes the method of determining the present use-value for agricultural land and horticultural land to one based on cash rents. The current method is based on the price and yield of corn and soybeans.
- It authorizes the Use-Value Advisory Board to set the capitalization rate within a range of 6 to 7%. Current law sets the rate at 9%.
- It adds four new members to the Use-Value Advisory Board.
- It makes changes to the definitions that apply to the use-value statutes.
- It requires a new owner to file an application within 60 days of the property's transfer and certify that the owner intends to continue the present use and accepts liability for deferred taxes on the property.

FISCAL IMPACT: No General Fund impact. Potential local revenue change.

EFFECTIVE DATE: The proposal becomes effective for taxes imposed for taxable years beginning on or after July 1, 2003.

A copy of the proposed legislation, bill analysis, and fiscal memorandum begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S **D**

LEGISLATIVE PROPOSAL 6

SENATE DRS8712-LAxz-5 (04/17)

Short Title:	Amend Use Value Statutes.	(Public)
Sponsors:	Senators Hartsell; Dalton, Hoyle, Kerr, and Webster.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRESENT-USE VALUE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2 reads as rewritten:

"**§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.**

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit ~~shall~~ must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program.

(1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit ~~shall~~ must

be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program. Forestland is not required to be under a sound management program if it is determined that the highest and best use of the forestland is to diminish wind erosion, protect water quality, or serve as buffers for livestock or poultry operations. The term 'forestland' includes timberland and woodland.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit ~~shall~~ must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program.

(4) Individually owned. – Owned by one of the following:

a. A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.

b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and

whose members are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.

c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:

1. Is the creator of the trust or the creator's relative.
2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.

d. A testamentary trust that meets all of the following conditions:

1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

<u>e. Tenants in common, if each tenant is either a natural person or a business entity described in sub-subdivision b. of this subdivision. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is a natural person and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity.</u>

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce ~~income, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management.~~ income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(5a) Relative. – Any of the following:

a. A spouse or the spouse's lineal ancestor or descendant.

b. A lineal ancestor or a lineal descendant.

c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.

d. An aunt or an uncle.

e. A spouse of a person listed in paragraphs a. through d.

For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a) and share one of the following characteristics:

a. Type of classification.

b. Use of the same equipment or labor force."

SECTION 2. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and ~~shall~~ must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding

January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Natural Person Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, the land must, if owned by a natural person, also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, have been owned by the business entity or trust or by one or more of

its members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exception to Ownership Requirements. – ~~G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the~~Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if ~~both~~ all of the conditions listed in this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land. If the land qualifies for classification in the hands of the new owner under the provisions of this subsection, then the deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification.

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value at the time title to the land passed to the new owner.

(2) At the time title to the land passed to the new owner, the new owner acquires the land for the purposes of and continues to use the land for the purposes it was classified under subsection (a) of this section while under previous ownership.

(3) The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for the deferred taxes and intends to continue the present use of the land.

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. ~~§ 1381~~Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program ~~shall~~ must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees. Land that is voluntarily removed from production due to participation in any other program is not considered to be in actual production.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program. – If the property owner demonstrates any one of the following factors with respect to property, then the property is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.

(2) Compliance with a set of best management practices.

(3) Compliance with a written sound forest management plan for the production and sale of forest products.

(4) Compliance with a minimum gross income per acre test.

(5) Evidence of net income from the farm operation.

(6) Evidence that farming is the farm operator's principal source of income.

(7) Certification by a recognized agricultural, forestry, or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator."

SECTION 3. G.S. 105-277.4 reads as rewritten:

"**§ 105-277.4. Agricultural, horticultural and forestland – Application; appraisal at use value; appeal; deferred taxes.**

(a) Application. – Property coming within one of the classes defined in G.S. 105-277.3 ~~shall be~~ is eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application ~~shall~~ must clearly show that the property comes within one of the classes and ~~shall~~ must also contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An initial application ~~shall~~ must be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value

appraisal because of a change in use or acreage. An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

(b) Appraisal at Present-use Value. – Upon receipt of a properly executed application, the assessor ~~shall~~ must appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor ~~shall~~ must appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, or is property annexed subject to G.S. 160A-37(f1) or G.S. 160A-49(f1), the assessor ~~shall~~ must furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. ~~He shall~~The assessor must also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification. Upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S.160A-49(f1), or any change in the certification, the assessor for the county where the land subject to the annexation is located ~~shall,~~ must, within 30 days, determine if the land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city.

(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. Decisions of the county board may be appealed to the Property Tax Commission.

(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 ~~shall~~ must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes ~~shall~~ must be carried forward in the records of the taxing unit or units as deferred taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification. Failure to have an application approved is ground for disqualification. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the land had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land fails to meet a condition or requirement for classification, ~~a determination shall be made of~~ the

assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished. The deferred taxes for any given year may be paid in that year without the qualifying tract of land becoming ineligible for deferred status.

(d) Exceptions. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present use value classification solely due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

(1) There is a change in income caused by enrollment of the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.

(2) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29).

(3) The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

(e) Repealed by Session Laws 1997-270, s. 3, effective July 3, 1997."

SECTION 4. G.S. 105-277.7 reads as rewritten:

"**§ 105-277.7. Use-Value Advisory Board.**

(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The ~~Board shall annually submit to the Department of Revenue a recommended use-value manual developed in accordance with the guidelines in G.S. 105-289(a)(5). In developing the manual, the Board may consult with federal and State agencies as needed. The Board shall submit to the Department of Revenue recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department.~~

~~The Board shall be chaired by the~~ Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board ~~and~~ shall consist of the following additional ~~members:~~members, to serve ex officio:

(1) A ~~a~~ representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of ~~Agriculture;~~Agriculture.

(2) A ~~a~~ representative of the Forest Resources Division of the Department of Environment and Natural Resources, designated by the Director of that ~~Division; and a~~Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm Bureau, designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(b) Staff. ~~– All members shall serve ex officio.~~ The Agricultural Extension Service at North Carolina State University ~~shall~~ must provide clerical assistance to the Board.

(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic area. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from contracts with federal or State agencies as needed.

(2) The recommended net income ranges for forestland furnished to the Board by the Forestry Section of the North Carolina Cooperative Extension Service. These net income ranges may be based on up to six classes of land within each Major Land Resource Area designated by the United States Soil Conservation Service. In developing these ranges, the Forestry Section must consider the soil productivity and indicator tree species or stand type, the average stand establishment and annual management costs, the average rotation length and timber yield, and the average timber stumpage prices.

(3) The capitalization rates adopted by the Board prior to February 1 for use in capitalizing incomes into values. The capitalization rate for forestland shall be nine percent (9%). The capitalization rate for agricultural land and horticultural land must be no less than six

percent (6%) and no more than seven percent (7%). The incomes must be in the form of cash rents for agricultural lands and horticultural lands and net incomes for forestlands.

(4) The value per acre adopted by the Board for the best agricultural land. The value may not exceed one thousand two hundred dollars ($1,200).

(5) Recommendations concerning any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land based on a calculation to be determined by the Board. The Board shall annually report these recommendations to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(6) Recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department."

SECTION 5. G.S. 105-289(a) reads as rewritten.

"(a) It ~~shall be~~is the duty of the Department of Revenue:

(1) To discharge the duties prescribed by law and to enforce the provisions of this Subchapter.

(2) To exercise general and specific supervision over the valuation and taxation of property by taxing units throughout the State.

(3) To appraise the property of public service companies.

(4) To keep full and accurate records of the Commission's official proceedings.

(5) To prepare and distribute annually to each assessor ~~a~~ the manual developed by the Use-Value Advisory Board under G.S. 105-277.7 that establishes ~~five expected net income per acre ranges for agricultural land, horticultural land, and forestland, and establishes a method for appraising nonproductive land as a percentage of the lowest use-value established for productive land. The high and low net income amount in each range may differ by no more than fifteen dollars ($15.00). The basis for establishing each range shall be soil productivity.~~

~~For agricultural land, the expected net income per acre ranges shall be based on the actual yields and prices of corn and soybeans over a period of at least the five previous years, and the actual fixed and variable costs, including an imputed management cost, incurred in growing corn and soybeans over the same period of time. The manual shall contain recommended adjustments to the net income~~

~~per acre ranges for the growing of crops subject to acreage or poundage allotments.~~

~~Expected net income per acre ranges shall be similarly established for horticultural land and forestland, using typical horticultural or forest products in various growing regions of the State instead of corn and soybeans.~~ the cash rental rates for agricultural lands and horticultural lands and the net income ranges for forestland.

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs from the income requirement for other horticultural land, when evergreens are harvested from the land.

(7) To conduct studies of the cash rents for agricultural lands on a county or a regional basis, such as the Major Land Resource Area map designated and developed by the U.S. Department of Agriculture. The results of the studies must be furnished to the North Carolina Use-Value Advisory Board. The studies may be conducted on any reasonable basis and timetable that will be reflective of rents and values for each local area based on the productivity of the land."

SECTION 6. G.S. 105-296(j) reads as rewritten:

"(j) The assessor ~~shall~~ must annually review one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor ~~shall~~ must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Forest Resources Division of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any ~~information~~ information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's use-value classification when the owner

submits the requested information unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 7. G.S. 105-299 reads as rewritten:

"**§ 105-299. Employment of experts.**

The board of county commissioners may employ appraisal firms, mapping firms or other persons or firms having expertise in one or more of the duties of the assessor to assist ~~him or her~~ the assessor in the performance of ~~such~~ these duties. The county may also assign to county agencies, or contract with State or federal agencies, for any duties involved with the approval or auditing of use-value accounts. The county may make available to ~~such~~ these persons any information it has that will facilitate the performance of a contract entered into pursuant to this section. Persons receiving ~~such~~ this information ~~shall be~~are subject to the provisions of G.S. 105-289(e) and G.S. 105-259 regarding the use and disclosure of information provided to them by the county. Any person employed by an appraisal firm whose duties include the appraisal of property for the county ~~shall~~ must be required to demonstrate that he or she is qualified to carry out ~~such~~ these duties by achieving a passing grade on a comprehensive examination in the appraisal of property administered by the Department of Revenue. In the employment of ~~such~~ these firms, primary consideration ~~shall~~ must be given to the firms registered with the Department of Revenue pursuant to ~~the provisions of~~ G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a copy of the proposed contract may be sent by the board to the Department of Revenue for review before the invitation or acceptance of any bids. Contracts for the employment of these ~~such~~ firms or persons ~~shall be deemed to be~~ are contracts for personal services and ~~shall not be~~are not subject to the provisions of Article 8, Chapter 143, of the General Statutes."

SECTION 8. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2003.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 6: AMEND USE VALUE STATUTES

BY: MARTHA WALSTON, FISCAL RESEARCH DIVISION

SUMMARY: ***This Proposal is a joint effort of representatives from the Department of Revenue, the Farm Bureau, the Association of County Commissioners, and the Association of Assessing Officers to amend the present-use value statutes to more accurately determine the realistic present-use value of agricultural land, horticultural land, and forestland. The Proposal does the following:***

- ***Changes the method of determining the present use-value for agricultural land and horticultural land to one based on cash rents. The current method is based on the price and yield of corn and soybeans.***
- ***Lists factors that demonstrate property is operated under a sound management plan.***
- ***Authorizes the Use-Value Advisory Board to set the capitalization rate within a range of 6 to 7% for agricultural land and horticultural land. Forestland remains at 9%.***
- ***Adds four new members to the Use-Value Advisory Board.***
- ***Makes changes to the definitions that apply to the use-value statutes.***
- ***Requires a new owner to file an application within 60 days of the property's transfer and certify that the owner intends to continue the present use and accepts liability for deferred taxes on the property.***
- ***Requires the Use-Value Advisory Board to report annually to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on any recommended changes to (1) the capitalization rate for agricultural land and horticultural land, and (2) the maximum value per acre for the best agricultural land.***

BACKGROUND: In 1973, the General Assembly designated three classes of property as special classes of property under Article V, Sec. 2(2) of the North Carolina Constitution: agricultural land, horticultural land, and forestland. At that time, eligible property began to be appraised, assessed, and taxed at its present-use value, as opposed to its fair market value. The present-use value classification helps preserve farmland by insulating it from the rising property tax values caused by competing market pressures to develop farmland for commercial and residential purposes.

In 1985, the General Assembly enacted the current methodology for calculating present-use value. It directed the Department of Revenue to prepare and distribute

annually to each tax assessor a present-use value manual to assist in appraising and assessing farmland. A four-member Use-Value Advisory Board, under the supervision of the Agricultural Extension Service of North Carolina State University, submits a recommended manual to the Department each year. The present-use value manual is advisory only, and each county remains free to develop its own present-use value schedules. Until several years ago, all counties used the manual. Today, an increasing number of counties do not use the manual because the present-use values in the manual cannot be supported by credible market evidence. For example, the values determined for agricultural land are based on yields and prices of corn and soybeans using a capitalization rate of 9%. Corn and soybeans no longer represent the typical crops grown in the State and are not the major money crops. This current method erodes the intent to foster uniformity and creates equity problems between similar types of properties.

In 1999, the Revenue Laws Study Committee recommended to change the method for determining the present-use value of agricultural land and horticultural land. The Committee based the value of such land upon its cash rents using a capitalization rate of 5%. The proposal was introduced during the 1999 session, but was never discussed in committee.

BILL ANALYSIS: Section 1 of the proposal makes the following changes to the definitions that apply in the use-value statutes:

- To qualify for use-value treatment the agricultural land, forestland land, and horticultural land must be actively engaged in commercial production under a sound management program. A "sound management program" is defined as "a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement." The proposal exempts certain agricultural land, forestland, and horticultural land from a sound management program:
    1. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program.
    2. Forestland is exempt if it is determined that the highest and best use of the forestland is to diminish wind erosion, protect water quality, or serve as buffers for livestock or poultry operations. The proposal also clarifies that the term "forestland" includes timberland and woodland.
    3. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program.
- To qualify for use-value treatment, agricultural land, forestland, and horticultural land must be individually owned. The term "individually owned" means:

1. a natural person who (a) lives on the land, (b) has owned the land in their family for at least four years, or (c) received the land when it was eligible for use-value treatment in the prior owner's hands.
2. a business entity if farming, horticulture, or forestry is its principal business and whose members are all natural persons who are actively engaged in the business, are related to a member actually engaged in the business, or have inherited the property from one of these members.
3. a family or charitable testamentary trust that meets certain conditions. The family trust must be created by a natural person and the beneficiaries must be the creator of the trust, the creator's relatives, or a second trust whose beneficiaries are the creator of the first trust or the creator's relatives.
4. The proposal adds "tenants in common" within the term "individually-owned". Each tenant in common must either be a natural person or a business entity.

- The current definition of "present-use value" bases the value of agricultural land, horticultural land, or forestland on its ability to produce income, using a capitalization rate of 9%. The proposal provides that the capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board pursuant to statutory guidelines defining the duties of the Board. The capitalization rate for forestland will remain at 9%.

- The proposal creates a definition for "unit". Current law requires agricultural land, horticultural land, and forestland to be part of a unit, but does not define the term.

Section 2 of the proposal does the following:

- Under current law, the property must be the owner's residence or have been owned by the person for four years before the property can be classified in the use-value program. Prior to 2002, there was an exception to the four-year ownership requirement, if the new owner owned other property classified in the use-value program. S.L. 2001-499 removed the requirement that the new owner have other property classified in the use-value program. However, the new owner must acquire the land for the purposes of and continue to use the land for the purposes it was classified under the use-value program. Also, the new owner is liable for the deferred taxes. The proposal clarifies that when the land is transferred to a new owner who intends to continue its use-value purpose, the deferred taxes remain a lien on the land. The proposal also requires the new owner to file an application for use-value within 60 days of the date of the property's transfer and certify that the new owner intends to continue the present use of the land and accepts liability for

the deferred taxes. Under current law, the deferred taxes for the preceding three years become payable whenever the property loses its eligibility for the benefit of the present-use value.

- Under current law, land enrolled in the federal Conservation Reserve Program is considered to be in actual production for use-value determination, and income derived from participation in the federal program may be used to meet the gross income requirements for use-value classification. The proposal corrects an incorrect cite to this federal program, and clarifies that land voluntarily removed from production due to participation in any other program WILL NOT be considered to be in actual production. (Under the federal Conservation Reserve Program, owners are paid for agreeing to refrain from farming their property in order to conserve and improve the soil and water resources of the land.)
- The proposal sets out a list of factors that the property owner may demonstrate in order to show that the property is operated under a sound management program. Only one of these factors must be demonstrated in order to meet the sound management requirement.

Section 3 of the proposal does the following:

- G.S. 105-277.4 sets out the requirements for a timely and proper application for present-use value classification, the duties of the assessor when appraising at present-use value, and the determination and payment of deferred taxes. An initial application for present-use value is required to be filed during the regular listing period or within 30 days of the date shown on a notice of change in valuation. A new application is required when the property is transferred or becomes ineligible because of a change in use or acreage. The proposal allows a taxpayer to file an application any time during the calendar year if the application is required because of a transfer of the land. However, the new application must be submitted within 60 days of the date of the property's transfer.
- The proposal clarifies that failure to have an application approved is ground for disqualification as classified property. This means that if classified property is transferred to a new owner who intends to continue the present use of the property and the new owner does not apply for and receive approval for present-use value classification, then the new owner becomes liable for the deferred taxes.

Section 4 of the proposal does the following:

- Changes the make-up and duties of the Use-Value Advisory Board. Under current law, the Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of NC State University.

The Board annually submits a recommended manual to the Department of Revenue. The Department of Revenue annually prepares and distributes this manual to each assessor.

The proposal adds four new members to the current make-up of the Board:

1. The Director of the Agricultural Extension Service of NCSU, serves as chair.
2. A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.
3. A representative of the Forest Resources Division of DENR, designated by the Director of that Division.
4. A representative of the Agricultural Extension Service at NC Agricultural and Technical State University, designated by the Director of the Extension Service.
5. A representative of the NC Farm Bureau, designated by the President of the Bureau.
6. A representative of the NC Association of Assessing Officers, designated by the President of the Association.
7. The Director of the Property Tax Division of the NC Department of Revenue or the Director's designee.
8. A representative of the NC Association of County Commissioners, designated by the President of the Association.

The proposal makes substantive changes to the duties of the Use-Value Advisory Board. Under current law, the required contents of the manual are set out in the statutory duties of the Department of Revenue. The proposal changes some of these requirements and moves them to the statute setting out the duties of the Use Value-Advisory Board. The Board must set out the following in the manual:

- The expected net income per acre ranges of agricultural land. These are to be based on the estimated cash rental rates for agricultural lands for the various classes of soil in the State, instead of the actual yields and prices of corn and soybeans over a period of at least the five previous years.
- The expected net income per acre ranges for horticultural land. These are to be based on the estimated cash rental rates for horticultural lands for the various classes of soil in the State, instead of typical horticultural products in various growing regions in the State.
- The rental rates for both agricultural land and horticultural land are to be used when agricultural or horticultural purposes are presumed to be the highest and best use of the land. These

rates may be established from individual county studies or contracts with federal or State agencies.

- The expected net income per acre ranges for forestland. These are to be furnished by the Forestry Section of the NC Cooperative Extension Service and are to be based on six Major Land Resource Areas in the State. These areas are geographic regions designated by the US Soil Conservation Service. The proposal sets out in the statute a list of factors that the Forestry Section must consider when developing the income ranges. These same factors are currently listed in the Use-Value Manual.
- The capitalization rates adopted by the Board prior to February 1. The rate for forestland remains at 9%. The rate for agricultural land and horticultural land is changed from 9% to a rate of no less than 6% and no more than 7%. The rate is used to capitalize incomes into values.
- The value per acre for the best agricultural land, not to exceed $1,200.
- Recommendation of any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land. These recommendations must be annually reported to the Revenue Laws Study Committee and to the President Pro Tem and Speaker.

Section 5 of the proposal changes the duties of the Department of Revenue as follows:

- Moves the required contents of the Use-Value Manual to the Use-Value Advisory Board statute.
- Requires the Department to conduct studies of the cash rents for agricultural lands.

Section 6 of the proposal amends G.S. 105-296, which sets out the powers and duties of the assessor. This section requires the assessor to annually review one eighth of the parcels in the county classified at present-use value and authorizes the assessor to require an owner to submit information needed by the assessor to verify that the property continues to qualify. The proposal (1) authorizes the assessor to request assistance in carrying out the review, (2) clarifies that the assessor may require the owner to submit information of a sound management plan when verifying the classification of forestland, (3) clarifies that the period of the review process is based on the average of the preceding three years' data, (4) requires the assessor to

consider acts of nature that may prevent the growing of crops or the realization of income when determining whether the property is operated under a sound management program, and (5) requires the assessor to allow the property owner to submit additional information before determining that the property is not operated under a sound management program.

Section 7 of the proposal amends G.S. 105-299, which authorizes the board of county commissioners to employ experts. The proposal authorizes the county to assign to county agencies or contract with State or federal agencies, for any duties involved with the approval or auditing of use-value accounts.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: **May 13, 2002**

TO: Revenue Laws Study Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Amend Use Value Statutes

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			No General Fund Impact		
Local Revenue			Potential Local Revenue Change		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, N.C. Department of Revenue, Ad Valorem Tax Division.

EFFECTIVE DATE: July 1, 2003 and applies to taxes imposed for taxable years beginning on or after that date.

BILL SUMMARY: Under current law farmers are charged property taxes based on the land value for agricultural and horticultural purposes, rather than the full market price. In general, this value is lower than the market price because it does not reflect any potential alternative uses for the property (i.e. new homes, commercial development, or industrial

facilities). Under the current system the adjusted value for agriculture is based on the market price for corn and soybeans, as well as the cost of producing corn and soybeans. A Use Value Advisory Board is charged with determining the basis for horticultural land. The Use Value Advisory Board has generally created a manual each year. County tax assessors can use this manual to determine values under the use value program, or can include their own values in line with the county's schedule of values. This bill changes the current program in several ways. In Section 1 the proposal exempts certain agricultural, forestland, and horticultural land from the existing sound management program requirement, primarily if the "highest and best use" of the forestland is to serve as a buffer, or a small portion of the agricultural or horticultural unit is actually woodland. Second, it clarifies that the term "tenants in common" is a form of individually owned property for use value participation purposes. It also clarifies that each beneficiary of a family trust must be a natural person to meet the individually owned requirements. This section also provides that the Use Value Advisory Board determines the appropriate income and capitalization rates to be used to determine use value. Section 2 clarifies that when land under the use value program is transferred to a new owner who intends to continue under the program, the deferred taxes remain a lien on the property. It also requires that the new owner file an application for use value within 60 days of the transfer, certify that they intend to continue to use the property for an allowable activity under the use value program, and accept liability for the deferred taxes if the requirements are not met. This section also clarifies that land voluntarily removed from production due to participation in certain federal programs will not be considered in actual production for use value purposes. Section 3 modifies existing law to allow a taxpayer to file an application at any time during the calendar year if such an application is required due to a land transfer. It also clarifies that failure to have an application approved is grounds for disqualification from the program.

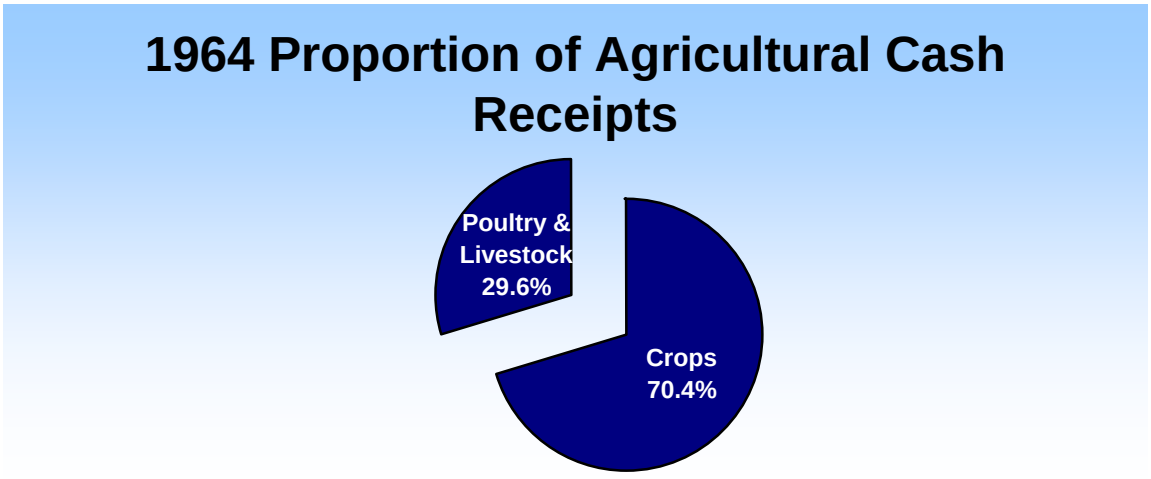
Section 4 makes the most significant changes to current law. It modifies both the membership and duties of the Use Value Advisory Board. The new members include a representative of the Farm Bureau, a representative of the NC Association of Assessing Officers, the Director of the Property Tax Division of the Department of Revenue, and a representative of the NC Association of County Commissioners. The Board is now charged with determining expected net incomes per acre for agricultural and horticultural land on the basis of cash rental rates. (Currently yields and prices of corn, soybeans, and various horticultural products are used as the base). Thus, this section of the bill changes the tax basis for both types of land to cash rents. Section 4 also requires that the Use Value Advisory Board annually select a capitalization rate for converting incomes into values. This capitalization rate must be between 6% and 7%.

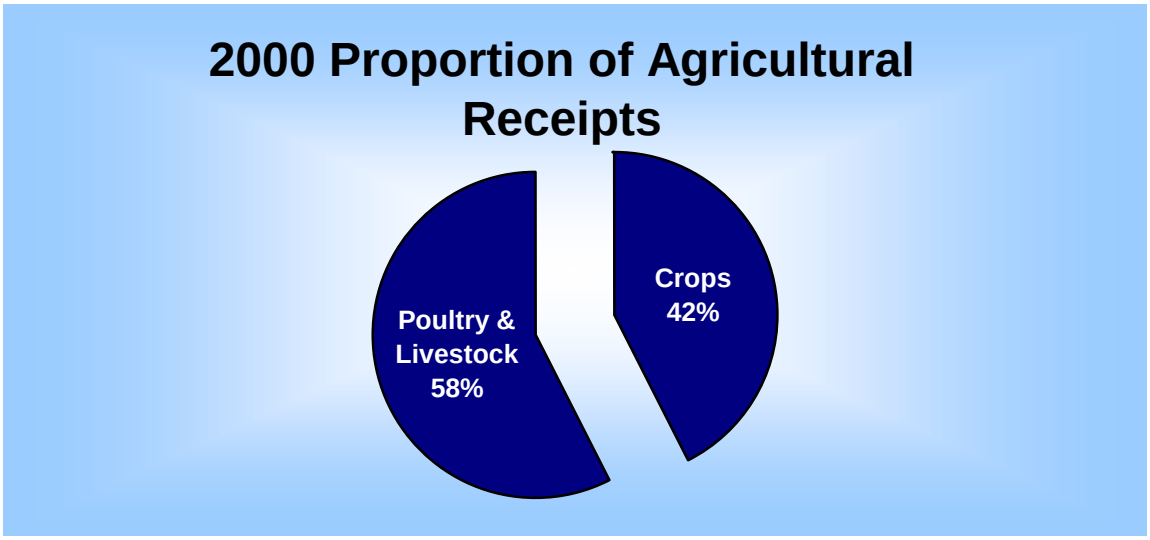
Section 5 requires the Department of Revenue to study cash rents for agricultural lands, and moves some existing language to a different section of the Machinery Act. Section 6 authorizes the assessor to request assistance in the review and clarifies that the assessor may require the owner to submit evidence of the existence of a sound management plan. Section 7 gives county commissions the authority to assign county agents or contract with other state and federal agencies to assist with the use valuation process.

BACKGROUND:

Under G.S. 105-289(a)5 the Department of Revenue and the Use Value Advisory Committee are instructed to develop a manual to assist county assessors in determining the use-value of agricultural, horticultural, and forest land. The law states that the use value should be based on expected net income from the property. The expected net income for agricultural land is based on actual yields, the price of corn and soybeans for the past five years, and the actual cost of growing corn and soybeans during that same period. The law allows the committee to set a method for determining the income potential of horticultural land. At the time this law was adopted, crops represented 52.8% of agricultural cash receipts.

In 1996, 1997, and 1999 the Revenue Laws Study Committee was informed that corn and soybean prices might no longer be the most appropriate method for determining the expected income for farmland, as crops were no longer the primary agricultural product of the state, and corn and soybeans represent an extremely small subset of crop receipts. As noted in the charts below, the proportion of agricultural cash receipts that come from crops has declined from 70.4% in 1964 to 42.4% in 2000. In 2000 corn and soybeans are only 3.8% of the total farm cash receipts, suggesting that those two items were approximately 8.9% of the crop total.





SOURCES OF DATA: North Carolina Department of Agriculture and Consumer Services, Agriculture Statistics Section.

In 1996 Revenue Laws was also informed that cost of production data for corn and soybeans was also no longer available, as the federal government no longer created that database. As a result of these two factors, limited data and shifts in agricultural production, Revenue Laws directed the Use Value Advisory Board to study the issue and return to Revenue Laws with their recommendation for a new system.

ASSUMPTIONS AND METHODOLOGY:

In May 1998 researchers from the North Carolina Cooperative Extension Service conducted a statewide survey to determine the appropriateness of cash rent as a new basis for the use value system. The survey asked Extension Directors, Tax Assessors, Farm Credit Service Appraisers, and farmers to provide estimates of agricultural land values (when sold as agricultural land) and agricultural cash rents. Estimates were given for low, medium, and high productivity land. The data was sorted by region (referred to as a Major Land Resource Area or MLRA). Allowances were also made for quota crops. The Extension Service received responses from 98 County Extension Directors and 98 County Tax Assessors. Farm Credit also gave estimates for all 100 counties. They received at least one farmer response from 75 counties.

When the Use Value Advisory Board compared the sale price of farmland sold as farmland to the cash rent derived from that land, it found the average rent to value ratio to be 2% in most of the MLRAs. The notable exception is the Tidewater region where the average rent to value ratio is 4.5%. This ratio most closely reflects the true rent to value ratio because the agricultural use of the property in that region is often its highest and best use since there are not many competing pressures to increase the value of the property. For this reason, the Use Value Advisory Board recommended using a 5% capitalization rate. Also, 5% is the nationwide average capitalization rate for farmland.

Since that time the Department of Revenue and the Extension Service have attempted to update their findings. This new survey indicates that only 57 counties are currently using the Use Value Advisory Board manual, while 39 are not (4 counties did not report or did not have agriculture acres in the use value program). The data also showed that at a 6% cap rate under a cash rent system, 64 counties would gain revenue, while 32 would lose. At 7% the numbers move to 40 counties that will gain and 55 that will lose revenue. (The Use Value Advisory Board is charged with choosing a rate between 6% and 7%). The average rent to value ratio in this survey was 7.57%. A review of the newer revaluations suggests an average rent to value ratio of 6% or less.

At this time no data is available on the number of acres in the program in each county. Therefore, no overall estimate of the fiscal impact of this portion of the bill is possible. Additionally, no good data is available on the impact of the other changes in the bill, although the overall statewide impact is expected to be fairly small.

LEGISLATIVE PROPOSAL #7

DISCLOSE SOCIAL SECURITY # TO TAX COLLECTOR

LEGISLATIVE PROPOSAL 7:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO AUTHORIZE DMV TO DISCLOSE SOCIAL SECURITY NUMBERS TO LOCAL TAX COLLECTORS.

SHORT TITLE: Disclose Social Security # to Tax Collector.

BRIEF OVERVIEW: This proposal authorizes DMV to disclose to a local tax collector the social security number of an applicant for a driver's license to assist counties in collecting unpaid taxes, especially delinquent property taxes due on motor vehicles.

FISCAL IMPACT: No impact on the General Fund. Potential revenue gain for local governments.

EFFECTIVE DATE: The proposal is effective when it becomes law.

A copy of the proposed legislation, bill analysis, and fiscal memorandum begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S **D**

LEGISLATIVE PROPOSAL 7

2001-LAz-7 [v.7] (04/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/14/2002 12:32:40 PM

Short Title: Disclose Social Security # to Tax Collector.	(Public)
Sponsors: .	
Referred to:	

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DMV TO DISCLOSE SOCIAL SECURITY NUMBERS TO LOCAL TAX COLLECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the drivers license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To a tax collector for the purpose of verifying the identity of a delinquent taxpayer."

SECTION 2. G.S. 105-350 reads as rewritten:

"**§ 105-350. General duties of tax collectors.**

It shall be the duty of each tax collector:

(1) To employ all lawful means to collect all property, dog, license, privilege, and franchise taxes with which he is charged by the governing body.

(2) To give such bond as may be required of him by the governing body under the provisions of G.S. 105-349.

(3) To perform such duties in connection with the preparation of the tax records and tax receipts as the governing body may direct under the provisions of G.S. 105-319 and 105-320.

(4) To keep adequate records of all collections he makes.

(5) To account for all moneys coming into his hands in such form and detail as may be required by the chief accounting officer of the taxing unit.

(6) To make settlement at the times required by G.S. 105-373 and at any other time the governing body may require him to do so.

(7) To submit to the governing body at each of its regular meetings a report of the amount he has collected on each year's taxes with which he is charged, the amount remaining uncollected, and the steps he is taking to encourage or enforce payment of uncollected taxes.

(8) To send bills or notices of taxes due to taxpayers if instructed to do so by the governing body.

(9) To visit delinquent taxpayers to encourage payment of taxes if instructed to do so by the governing body.

(10) To use social security numbers obtained from the Division of Motor Vehicles under G.S. 20-70(b2) solely for the purposes of securing complete tax listings, appraising or assessing taxable property, and collecting taxes. The tax collector may not disclose the numbers to any other person except to comply with a court order or a law. A collector who violates this subdivision is punishable as provided in G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate."

SECTION 3. This act is effective when it becomes law.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 7: DISCLOSE SOCIAL SECURITY # TO TAX COLLECTOR

BY: MARTHA WALSTON, FISCAL RESEARCH DIVISION

SUMMARY: ***The proposal authorizes the Division of Motor Vehicles to disclose to a local tax collector the social security number of an applicant for a driver's license who is delinquent in paying property taxes on a motor vehicle. This would assist counties in collecting delinquent property taxes due on motor vehicles. The proposal also amends the statutory duties of a tax collector to include the duty to use the social security numbers obtained from the Division only for specified purposes. Violation of this duty is a misdemeanor.***

BACKGROUND: Until several years ago, the Department of Revenue and the local tax collectors had access to a Division of Motor Vehicles (DMV) computer screen that included the social security numbers of applicants for driver's licenses. This exchange of information was not addressed by statute. In 1997, the DMV changed to a new computer system that did not show social security numbers. That year, the General Assembly also amended the driver's license law to require all applicants for a driver's license to provide their social security numbers and gave specific authority to the DMV to provide social security numbers to the Child Support Enforcement Program.[1] The law did not address disclosure of the numbers to the Department of Revenue. As a result, the practice between the DMV and the Department ceased.

In 1999, the Revenue Laws Study Committee recommended that the DMV be given authority to disclose a social security number to the Department of Revenue for the purpose of taxpayer identification. This legislation was enacted in S.L. 2000-120. The disclosure of numbers for tax purposes is authorized by Federal law, 42 U.S.C. 405(c)(2)(C)(i). This federal statute provides that any State **or political subdivision thereof** may, in the administration of any tax, within its jurisdiction, utilize the social security account numbers for the purpose of establishing the identification of individuals affected by such law.

For several years, local tax collectors, the DMV, and the Department of Revenue have been meeting to solve the access problem without legislation, but have reached no solution.

[1] 42 U.S.C. 666 requires each State to have statutorily prescribed procedures to improve effectiveness of child support enforcement. One of these procedures is the recording of the social security number of any applicant for a driver's license.

BILL ANALYSIS: The **Proposal** amends G.S. 20-7(b2) to add tax collectors to the list of persons authorized to receive social security numbers from the DMV. This statute authorizes the DMV to disclose the social security number of a driver's license applicant only if disclosure is allowed under federal law. 42 U.S. C. 405 appears to support disclosure to local tax collectors. The proposal only authorizes the disclosure of social security numbers of delinquent taxpayers. It does not authorize the DMV to disclose social security numbers of taxpayers who are in compliance. Pursuant to G.S. 105-330.4, the taxes on motor vehicles up for registration renewal become due on the first day of the fourth month following the date registration expired. The taxes become delinquent in the fifth month. If the taxes on a registered vehicle are not paid within four months after they become due, then on the tenth of each month the collector must send a list containing the names, addresses, and vehicle identification numbers of these delinquent taxpayers to the DMV pursuant to G.S. 105-330.7. The list shows those taxpayers that have been delinquent for four months. Once receiving this list the DMV places a block on the vehicle's registration for the following year. Registration is renewed only when the taxpayer obtains a receipt showing that the previous year's taxes have been paid (G.S. 20-50.4).

The P**roposal** authorizes the DMV to disclose the social security numbers of these delinquent taxpayers to the tax collector. The tax collectors would like to receive these numbers as soon as possible once the taxpayer is delinquent (the fifth month after expiration of the registration date). The interested parties plan to work together in developing appropriate procedures for sharing social security numbers. Access to social security numbers will assist the tax collectors in collecting delinquent property taxes, especially taxes due on motor vehicles, and will also make it easier for collectors to garnish wages of non-payers.

The **Proposal** also amends the statutory duties of tax collectors by directing that the collector use the social security numbers obtained from the DMV solely for the purposes of securing complete tax listings, appraising or assessing taxable property, and collecting taxes. The tax collector may not disclose the numbers to any other person except to comply with a court order or a law. A violation of this duty is a Class 1 misdemeanor and subjects the violator to dismissal from public office or public employment and inability to hold public office or public employment in the State for five years after the violation. This is the same punishment given to a local tax official who divulges confidential information obtained from the Department of Revenue under G.S. 105-289.

FISCAL ANALYSIS MEMORANDUM

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DATE: **May 13, 2002**

TO: Revenue Laws Study Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Disclose Social Security # to Tax Collector

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	No General Fund Impact				
Local Governments	Potential Revenue Gain – See Assumptions and Methodology				
EXPENDITURES					
Highway Fund	$26,400-$29,840				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, the Property Tax Division of the Department of Revenue, Division of Motor Vehicles.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The proposal authorizes the Division of Motor Vehicles (DMV) to disclose social security numbers to local tax collectors for the purposes of verifying taxpayer

identity and collecting delinquent property taxes, primarily those due on motor vehicles. The social security numbers will only be disclosed if a block is placed on the vehicle for non-payment. (Social security numbers of non-delinquent taxpayers will not be released). The bill also includes penalties for improper use of a taxpayer's social security number.

ASSUMPTIONS AND METHODOLOGY: In 1993 the General Assembly approved a new method of collecting motor vehicle property taxes. Under this structure county tax assessors are to report the non-payment of property taxes on a motor vehicle to the Division of Motor Vehicles. Once this information is received, neither the DMV or tag agents should renew that vehicle's registration because of outstanding tax liabilities. As such, the vehicle registration is "blocked" until the local property taxes are paid. Despite this system, local tax collectors report that some vehicle owners continue to avoid paying local property taxes on motor vehicles.

As the chart below indicates, the collection rate for motor vehicles is consistently lower than that of real property.

	Fiscal Year Ending June 30,			
Municipalities	2001	2000	1999	1998
Property Tax Collection % all Property	97.04	97.07	97.23	97.02
Property Tax Collection % all except Motor Vehicles	98.18	98.17	98.45	98.17
Property Tax Collection % Motor Vehicles	86.97	86.38	86.63	86.65
Counties				
Property Tax Collection % all Property	96.46	96.53	96.53	96.59
Property Tax Collection % all except Motor Vehicles	97.67	97.81	97.9	97.79
Property Tax Collection % Motor Vehicles	86.95	87.22	87.67	87.41

Local government experts indicate that this lower collection rate is the result of a number of factors, including tax avoidance.

By releasing the social security numbers of delinquent taxpayers to local tax officials, the proposal provides local governments with one more tool to collect delinquent taxes. If the legislation were approved, tax collectors would be able to pursue collection through wage garnishment. (This method is currently employed to collect delinquent taxes on real

property). Social security numbers are already used by the Department of Revenue and DHHS to collect back taxes and delinquent child support payments.

Because it is unclear to Fiscal Research how often tax collectors would use this information, how successful they will be in receiving payment through garnishment, and what proportion of the motor vehicle collection issue is attributable to tax avoidance, no fiscal estimate of the revenue gain is possible on the bill.

One the expenditures side, the Division of Motor Vehicles believes two different methods could be employed to transfer the social security numbers of delinquent taxpayers to county assessors and tax collectors. One option is to provide this information to county tax collectors through the County Tax Menu on the DMV system. Under this option, appropriate officials in all 100 counties would be able to view social security information for a tax stop placed on a vehicle. Only the vehicle's primary owner would have their social security number disclosed. This is DMV's preferred method, and is estimated to cost approximately $26,400 in FY 2002-03. The funds would be used primarily to cover 300 hours of programming. A second option is to provide the same information to county tax officers through a batch processing system. Under this option, only counties that submit tax blocks would receive a FTP file with appropriate data. The system would be updated nightly. This option would cost approximately $29,840 to cover 340 hours of programming time.

SOURCES OF DATA: Local Government Commission, Office of the State Treasurer.

LEGISLATIVE PROPOSAL #8

EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT

LEGISLATIVE PROPOSAL 8:

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2002 REGULAR SESSION OF THE
2001 GENERAL ASSEMBLY

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

SHORT TITLE: Extend Qualified Business Venture Tax Credit.

BRIEF OVERVIEW: The proposal extends the sunset for the tax credit for qualified business investments for one year. Without this bill, that tax credit would expire for investments made on or after January 1, 2003.

FISCAL IMPACT: The proposal could decrease General Fund revenues by $6 million in fiscal year 2003-04

EFFECTIVE DATE: The proposal is effective when it becomes law.

A copy of the proposed legislation, bill analysis, and fiscal memorandum begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S **D**

LEGISLATIVE PROPOSAL 8

SENATE DRS8709-LYz-174B* (04/22)

Short Title:	Extend Qualified Business Venture Tax Credit.	(Public)
Sponsors:	Senators Hoyle, Clodfelter, Dalton, Hartsell, and Kerr.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 2003.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Article is repealed effective for investments made on or after January 1, 2004."

SECTION 4. This act is effective when it becomes law.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL 8: EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT

BY: CANAAN HUIE, BILL DRAFTING DIVISION

SUMMARY: This proposal extends the sunset for the tax credit for qualified business investments one year. Without this proposal, the tax credit would expire for investments made on or after January 1, 2003. This bill is effective when it becomes law.

ANALYSIS: The qualified business investment tax credit was enacted in August 1987 to promote economic development for North Carolina businesses. The initial credits applied to both corporations and individuals taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in Fulton Corp. v. Faulkner, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit was to expire for investments made on or after January 1, 1999. In 1998, as part of the appropriations bill, the credit was extended for four additional years until January 1, 2003. This bill would extend that sunset for one additional year.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer. In general, a taxpayer forfeits the credit if the taxpayer transfers the

securities within one year or the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made.[1]

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because they reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in either a North Carolina business or an investment company whose purpose is to invest in North Carolina businesses, while no tax reduction was allowed for purchasing similar stock in out-of-state businesses or investment companies whose purpose is to invest in businesses that may not be North Carolina businesses. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit along with several others, at great length. The original proposal of the Committee was to repeal all qualified business investment credits, effective January 1, 1997. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include investments in businesses located both inside and outside North Carolina, but was no longer allowed for investments in investment companies and was limited to investments made by individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50-mile radius of their home.

There may be a constitutional concern with the provision of the credit regarding "qualified grantee businesses". In order to be a business in which investments are eligible for a credit, the business must be either a "qualified business venture" or a "qualified grantee business". Both types of businesses must be registered with the Secretary of State. The definition of "qualified business venture" includes several general requirements related to the line of business, gross revenues of the business, and the organization date of the business. The definition of "qualified grantee business" includes a requirement that the business have received a grant in at least one of the three previous years from one of several named entities. One could argue that this provision violates the rule of uniformity since a credit is allowed only for investments in business that have received a grant from one of several specifically named organizations, and not for investments in similar businesses that have received grants from similar organizations. However, to date this issue has not been raised in litigation and is therefore not settled.

[1] There are two exceptions to this forfeiture provision. First, if the transfer occurs as a result of the death of the taxpayer, the liquidation of the taxpayer, or certain reorganizations of the qualified business, within the one-year period, the transfer does not require forfeiture. Second, the 1998 legislation created an exception to this forfeiture provision for projects in the film industry. It is unusual for a project in that industry in which a person might invest to last for more than 5 years.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 6, 2002

TO: Revenue Laws Study Committee

FROM: Richard Bostic
Fiscal Research Division

RE: Extend Qualified Business Venture Tax Credit

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund		($6,000,000)			
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of the Secretary of State

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The bill extends the individual income tax credit for Qualified Business investments from January 1, 2003 to January 1, 2004.

ASSUMPTIONS AND METHODOLOGY: The amount of Qualified Business credits given each year is capped at $6 million. Requests for credits have exceeded the $6 million cap for four out of the last five years. In fact, the amount of credit requested ($19 million) in 2001 was approximately three times the amount of credit available. Given the recent investor interest in the credit program, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The General Fund fiscal impact occurs in FY 2003-04 because the investments made in 2003 will be awarded credits on returns filed in the spring of 2004.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: